

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: October 19, 2005

Division: Engineering

Bulk Item: Yes X No     

Department: Facilities Development

Staff Contact Person: Larry S. Chalmers, AIA, Director of Facilities Development

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**AGENDA ITEM WORDING:** Approval to award a Construction Manager at Risk contract to The Tower Group, Inc. to serve as Advisor during Design and General Contractor for construction of the new Murray E. Nelson Government and Cultural Center (Upper Keys Government Center) in Key Largo, in the amount of 16.5% of the Guaranteed Maximum Price (GMP) as defined in the "Agreement Between the County and Construction Manager".

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**ITEM BACKGROUND:** On 9/14/05, the County received four responses to our Request for Qualifications (RFQ's) for Construction Manager-at-Risk to serve as Advisor during Design and General Contractor for Construction of the Murray E. Nelson Government and Cultural Center (Upper Keys Government Center). These responses are as follows: Kaufman Lynn; The Morganti Group; A2 Group and The Tower Group. On 10/7/05, these same firms participated publicly in a Qualification/Value Based selection process. All four firms submitted Statements of Qualifications to the County's Request for Qualifications and all were asked to respond to a Request for Proposal followed by individual interviews. All four firms were scored in the areas of Experience, Project Organization, Project Approach, Proposed Sharing of Project Savings and Proposed Construction Schedule & Project Plan. Once the scoring was complete, the Cost Proposals for each firm were opened. Each firm's total fee for services was divided by their quality score. The lowest cost per unit of quality was determined to be the best value to the County.

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**PREVIOUS RELEVANT BOCC ACTION:** Project has been discussed numerous times with the Board.

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**CONTRACT/AGREEMENT CHANGES:** None.

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**STAFF RECOMMENDATIONS:** Approval as stated above. The estimated GMP is \$6,500,000.

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**TOTAL COST:** \$1,072,500.00 **BUDGETED:** Yes X No     

**COST TO COUNTY:** \$1,072,500.00 **SOURCE OF FUNDS:** Fund 304

**REVENUE PRODUCING:** Yes      No      **AMOUNT PER MONTH**      **Year**     

**APPROVED BY:** County Atty      OMB/Purchasing      Risk Management     

**DIVISION DIRECTOR APPROVAL:**

  
David S. Koppel, PE, County Engineer

**DOCUMENTATION:** Included X Not Required     

**DISPOSITION:**     

**AGENDA ITEM #**     

Revised 2/05



## **AGREEMENT BETWEEN COUNTY AND CONSTRUCTION MANAGER**

|                            |   |
|----------------------------|---|
| PROJECT NAME AND LOCATION: | MURRAY E. NELSON GOVERNMENT<br>AND CULTURAL CENTER<br>102050 Overseas Highway, MM 102<br>Key Largo, Florida       |
| CONSTRUCTION MANAGER:      | The Tower Group, Inc.<br>405 SW 148 <sup>th</sup> Avenue, Suite One<br>Davie, FL 33325<br>954 476 3200            |
| PROJECT OWNER              | Monroe County, a political subdivision of the Sate of Florida,<br>1100 Simonton Street<br>Key West, Florida 33040 |
| ARCHITECT-ENGINEER:        | Currie Sowards Aguila Architects<br>134 NE 1 <sup>st</sup> Avenue<br>Delray Beach, FL 33444                       |

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**AGREEMENT  
BETWEEN COUNTY AND CONSTRUCTION MANAGER**

THIS AGREEMENT made this \_\_\_\_\_ day \_\_\_\_\_, 2005 in the year Two Thousand Five by and between Monroe County, a political subdivision of the State of Florida whose address is Gato Building, 1100 Simonton Street, Key West, Florida, 33040, hereinafter called County or Owner, and The Tower Group, Inc., 405 SW 148th Avenue, Suite 1, Davie, Florida 33325, hereinafter called Construction Manager.

**ARTICLE 1  
THE CONSTRUCTION TEAM AND EXTENT OF AGREEMENT**

The Construction Manager accepts the relationship of trust and confidence established between him and the County by this Agreement. He covenants with the County to furnish his best skill and judgment and to cooperate with the Architect-Engineer in furthering the interests of the County. He agrees to furnish efficient business administration and superintendence and use his best efforts to complete the project in the best and soundest way and in the most expeditious and economical manner consistent with the interest of the County.

- 1.1 The Construction Team The Construction Manager, the Director of Facilities Development for the County and the Architect-Engineer, called the "Construction Team", shall work jointly during design and through final construction completion and shall be available thereafter should additional services be required. The Architect-Engineer will provide leadership during the Preconstruction Phase with support from the Construction Manager and the Construction Manager shall provide leadership to the Construction Team on all matters relating to construction.

The specific representatives of the Construction Team are shown in Exhibit A attached.

- 1.2 Extent of Agreement – This Agreement for the *Murray E. Nelson Government and Cultural Center* (Project), between the County and the Construction Manager, supersedes any prior negotiations, representations or agreements. When drawings, specifications and other descriptive documents defining the work to be included under a construction authorization are substantially complete, they shall be identified in the construction authorization issued by the Project Director. When drawings, specifications and other descriptive documents defining the work to be included in the guaranteed maximum price (GMP) are sufficiently complete, an Amendment to the Agreement shall be signed by the County and Construction Manager, acknowledging the GMP amount and the drawings, specifications and other descriptive documents upon which the GMP is based. To expedite the preparation of this GMP Amendment by the County, the Construction Manager shall obtain four (4) sets of signed, sealed and dated drawings, specifications, and other documents upon which the GMP is based from the Architect-Engineer, and shall acknowledge on the face of each document of each set that it is the set upon which he based his GMP and shall send one set of the documents to the County's Director of Facilities Development along with his GMP proposal, while keeping one set for himself and returning one set to the Architect-Engineer, and one set to the Clerk of Courts for Monroe County. The GMP Proposal shall include the following sections:

|                       |  |
|-----------------------|--|
| <i>Section One:</i>   | <i>Summary of Work</i>   |
| <i>Section Two:</i>   | <i>GMP Price Summary – To include Construction Authorization &amp; Tax Savings</i> |
| <i>Section Three:</i> | <i>Scope Clarifications and Assumptions</i>  |
| <i>Section Four:</i>  | <i>Detailed Estimate</i>   |
| <i>Section Five:</i>  | <i>Bid Tabulations and Recommendations</i>   |
| <i>Section Six:</i>   | <i>Preliminary Construction Schedule</i>   |
| <i>Section Seven:</i> | <i>Contract Documents – Drawing List and Specification List</i>                    |

This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by written instrument signed by both the County and the Construction Manager.

- 1.3 Definitions:

Architect-Engineer –Currie Sowards Aguila Architects, 134 NE 1<sup>st</sup> Avenue, Delray Beach, Florida 33444.

Construction Authorization – The term Construction Authorization shall mean a written work order based on a defined scope of work excluding Construction Manager's fees as specified in Article 8, prepared by the Project Director and issued to the Construction Manager. Construction Authorizations shall be used prior to the date of the GMP Amendment and all work performed pursuant to

Construction Authorizations shall be included in the GMP

Construction Manager - The Tower Group, Inc., 405 SW 148<sup>th</sup> Avenue, Suite 1, Davie, Florida 33325,

Owner – Monroe County, a political subdivision of the State of Florida, acting through its Board of County Commissioners (hereinafter BOCC).

County's Representatives - The Director of Facilities Development and his superiors or designees.

Permitting Authorities - The local authorities with jurisdiction over the area in which the project is located.

Project - The Project is the total work to be performed under this Agreement. The Project consists of permitting, construction and code inspection for the Murray E. Nelson Government and Cultural Center Project necessary to build the component parts of the project identified in Exhibit B.

Project Director - The Director of Facilities Development is designated by the County to provide direct interface with the Construction Manager with respect to the County's responsibilities.

- 1.4 County's Construction Budget: The County's funds budgeted and requested for construction of the Project. The County's Construction Budget is Six Million Five Hundred Thousand (\$6,500,000.00) identified in Exhibit B, including all Construction Manager fees, costs of the work and the County's and Construction Manager's construction and interface contingencies as defined in Articles 8 and 9. This acknowledgement of the County's budgeted funds is not to be construed as the Construction Manager's Guaranteed Maximum Price. A Guaranteed Maximum Price will be offered by separate documentation as outlined in Article 7.

## **ARTICLE 2 CONSTRUCTION MANAGER'S SERVICES**

The services which the Construction Manager shall provide include, but are not limited to, those described or specified herein. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned.

### **2.1 PROJECT MANAGEMENT INFORMATION SYSTEM (PMIS)**

#### **2.1.1 General:**

- (1) Commencing immediately after contract award, the Construction Manager shall implement and shall utilize throughout the life of this Contract all subsystems of the Project Management Information System hereinafter referred to as PMIS.
- (2) The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions. It shall be prepared and furnished to the County and the Architect-Engineer monthly and shall accompany each pay request.
- (3) If requested by the Project Director, the Construction Manager shall conduct a comprehensive workshop for participants designated by the Project Director and additional seminars as required to provide instruction. This workshop and the seminars shall facilitate each participant's and the County's representatives' use and understanding of PMIS; shall support, in-part, the function of organizing in concert with the Architect-Engineer for the design and construction of the Project; and shall establish, with the full concurrence of the County and the Architect-Engineer, procedures for accomplishing the management control aspect of the Project.
- (4) The PMIS shall be described in terms of the following major subsystems:
  - (a) Narrative Reporting, on a monthly basis,
  - (b) Schedule Control, on a monthly basis,
  - (c) Cost Control, and estimating,
  - (d) Project Accounting,
  - (e) Accounting and Payment, and
  - (f) Action Reports.



### 2.1.2 Narrative Reporting Subsystem

- (1) The Construction Manager shall prepare written reports as described hereunder. No other PMIS narrative reports shall be required. All reports shall be in either an 8 1/2" X 11" format or an electronic format approved by the County.
- (2) The Narrative Reporting Subsystem shall include the following reports:
  - (a) A Monthly Executive Summary which provides an overview of current issues and pending decisions, future developments and expected achievements, and any problems or delays, including code violations found by Permitting Authority.
  - (b) A Monthly Cost Narrative describing the current construction cost estimate status of the Project.
  - (c) A Monthly Scheduling Narrative summarizing the current status of the overall project schedule. This report shall include an analysis of the various project schedules, a description of the critical path, and other analyses as necessary to compare planned performance with actual performance.
  - (d) A Monthly Accounting Narrative describing the current cost and payment status of the entire project. This report shall relate current encumbrances and expenditures to the budget allocations.
  - (e) A Monthly Construction Progress Report during the construction phase summarizing the work of the various subcontractors. This report shall include information from the weekly job site meetings as applicable such as general conditions, long lead supplies, current deliveries, safety and labor relations programs permits, construction problems and recommendations, and plans for the succeeding month.
  - (f) A Daily Construction Diary during the construction phase describing events and conditions on the site.
  - (g) Construction Manager shall implement the County's direct tax savings purchase plan as part of the Construction Manager's services.
- (3) The reports outlined in subsection (2)(a) through (e) above shall be bound with applicable computer reports and submitted monthly during design and construction phases and shall be current through the end of the preceding month. Copies shall be transmitted to the County and the Architect-Engineer and others designated by the Project Director with the monthly pay requisition.

Additional copies of the report outlined in subsection (2)(a) shall be bound separately and distributed monthly as directed by the Project Director.

- (4) The report outlined in subsection (2)(f) above shall be maintained at the site available to the County and Architect-Engineer. A copy, bound, of the complete diary shall be submitted to the County at the conclusion of the project.

### 2.1.3 Scheduled Control Subsystem

- (1) Master Project Schedule - Upon award of this Contract the master project schedule will be developed by the Construction Team and shall be submitted by the Construction Manager. The master project schedule shall cover the planning and design approvals, construction and Owner occupancy of the Project. This schedule will serve as the framework for the subsequent development of all detailed schedules. The master project schedule shall be produced and updated monthly throughout the project.
- (2) Within thirty (30) days after the date of the County's issuance of a Notice to Proceed, the Construction Manager shall prepare and submit to the Architect-Engineer a construction schedule graphically depicting the activities contemplated to occur as a necessary incident to performance of the work required to complete the project, showing the sequence in which the Construction Manager proposes for each such activity to occur and duration (dates of commencement and completion, respectively) of each such activity. The Architect-Engineer

shall determine whether the construction schedule developed and submitted by the Construction Manager meets the requirements stated above and such determination shall be binding on the Construction Manager. Failure of the Construction Manager to develop and submit a construction schedule as aforesaid shall be sufficient grounds for the Architect-Engineer to notify the County that sufficient cause exists to withhold any payment.

Following development and submittal of the construction schedule as aforesaid, the Construction Manager shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the subject project, or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the work performed and the occurrence of all events which have affected the progress of performance of the work already performed or will affect the progress of the performance of the work yet to be performed in contrast with the planned progress of performance of such work, as depicted on the original construction schedule and all updates and/or revisions thereto as reflected in the updated and/or revised construction schedule last submitted prior to submittal of each such monthly update and revision. Each such update and/or revision to the construction schedule shall be submitted to the Architect-Engineer in duplicate. Failure of the Construction Manager to update, revise, and submit the construction schedule as aforesaid shall be sufficient grounds for the Architect-Engineer to certify to the County that sufficient cause exists to withhold payment to the Construction Manager until a schedule or schedule update acceptable to the Architect-Engineer is submitted.

- (3) The Construction Manager shall prepare and incorporate into the schedule data base, at the required intervals, the following schedules:
  - (a) Pre-Bid Schedules (Subnetworks) - The Construction Manager shall prepare a construction schedule for work encompassed in each bid package. The schedule shall be sufficiently detailed as to be suitable for inclusion in the bid package as a framework for contract completion by the successful bidder. It shall show the interrelationships between the work of the successful bidder and that of other subcontractors, and shall establish milestones keyed to the overall master schedule.
  - (b) Subcontractor Construction Schedules (Subnetworks) - Upon the award of each subcontract, the Construction Manager shall jointly with the subcontractor, develop a schedule which is more detailed than the pre-bid schedule included in the specifications, taking into account the work schedule of the other subcontractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The construction schedule shall also show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.
  - (c) Occupancy Schedule - The Construction Manager shall jointly develop with the Architect-Engineer and the County a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy.

- 2.1.4 Cost Control Subsystem - The operation of this subsystem shall provide sufficient timely data and detail to permit the Construction Team to control and adjust the project requirements, needs, materials, equipment and systems by building and site elements so that construction will be completed at a cost which, together with all other project costs, will not exceed the maximum total project budget. Requirements of this subsystem include the following submissions at the following phases of the project:

Estimates

- (a) At completion of Advanced Schematic Preconstruction Phase For Each Item or Bid Package.
- (b) At Completion of Design Development Phase For Each Item Or Bid Package.
- (c) At establishment of the Guaranteed Maximum Price.
- (d) At Completion of 100% Construction Documents Phase For Each Item Or Bid Package.

- (e) Construction Documents Estimates - Prior to the bid of each bid package, when the working drawings and specifications are complete, the Construction Manager shall prepare and submit a cost estimate on the basis of a quantitative material take-off with current local cost for each bid group by subcontract package.

2.1.5 Project Accounting Subsystem - The operation of this subsystem shall enable the Construction Team to plan effectively and to monitor and control the funds available for the project, cash flow, costs, change orders, payments, and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, and amounts payable. This subsystem will be produced and updated monthly and includes the following reports which together will serve as a basic accounting tool and an audit trail. The Construction Manager will retain all project files in a manner consistent with proper accounting procedures that would be sufficient for an audit by the County for a period of 5 years after final completion of the project.

- (a) Costs Status Report showing the budget, estimate, and base commitment (awarded contracts and purchase orders) for any given contract or budget line item. It shall show approved change orders for each contract which when added to the base commitment will become the total commitment. Pending change orders will also be shown to produce the total estimated probable cost to complete the work.
- (b) A Payment Status Report showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), the retained, the amount payable (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request.
- (c) A Detailed Status Report showing the complete activity history of each item in the project accounting structure. It shall include the budget, estimate and base commitment figures for each contract. It shall give the change order history including change order numbers, description, proposed and approved dates, and the proposed and approved dollar amounts. It shall also show all pending or rejected change orders.
- (d) A Cash Flow Diagram showing the projected accumulation of cash payments against the project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.
- (e) A Job Ledger shall be maintained as necessary to supplement the operation of the project accounting subsystem. The job ledger will be used to provide construction cost accountability for general conditions work, on-site reimbursable expenses, and costs requiring accounting needs.

## 2.2 PROJECT MANUAL

- (1) Upon award of contract the Construction Manager shall develop a draft comprehensive Project Manual describing the services set forth in this Contract. This shall provide a plan for the control, direction, coordination and evaluation of work performed throughout the project organization including identification of key personnel, responsibilities of Construction Manager, County and Architect-Engineer; work flow diagrams; and strategy for bidding the work. The Project Manual shall be updated as necessary throughout the design, construction and Owner occupancy phases. Two hard copies and one PDF file of the Project Manual and any updates shall be submitted to the County and Architect-Engineer. The development of the Project Manual shall be a collaborative effort between the County, the Construction Manager and the Architect-Engineer.
- (2) Contents of Project Manual - The Project Manual shall describe in detail the procedures for executing the work and the organizations participating. The Project Manual shall include as a minimum the following sections:
  - (a) Project Definition - The known characteristics of the project or subprojects shall be described in general terms which will provide the participants a basic understanding of the project or sub-projects.
  - (b) Project Goals - The schedule, budget, physical, technical and other objectives for the project shall be defined.
  - (c) Project Strategy - A narrative description of the project delivery methods shall be utilized

to accomplish the project goals.

- (d) Project Organization - A summary organization chart showing the interrelationships between the County, the Construction Manager, the Architect-Engineer, other supporting organizations and permitting review agencies. Detailed charts, one each for the Construction Manager, the Architect-Engineer, and the County showing organizational elements participating in the project shall be included.
- (e) Responsibility Performance Chart - A detailed matrix showing the specific responsibilities and interrelationships of the County, the Architect-Engineer, and Construction Manager. The Responsibility Performance Chart shall indicate major responsibility, and minor responsibility, for each specific task required to deliver the project. The Construction Manager shall develop a similar chart for the personnel within his own organization who are assigned to the project, and also for the personnel of the County and the Architect-Engineer from data supplied by each.
- (f) Flow Diagrams - These charts shall display the flow of information and the decision process for the review and approval of shop drawings and submittals, progress and change orders.
- (g) Written Procedures - The Construction Manager will provide written procedures for communications and coordination required between Construction Team members throughout the project. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews, and other necessary communications.
- (h) Electronic Procedures - The Construction Manager will provide electronic procedures for the processing of all project correspondence including RFI's, RFP's etc.

## 2.3 DESIGN REVIEW AND RECOMMENDATIONS

- (1) Review and Recommendations and Warranty. - The Construction Manager shall familiarize himself thoroughly with the evolving architectural, civil, mechanical, plumbing, electrical, and structural plans and specifications and shall follow the development of design from Preliminaries through Working Drawings. He shall make recommendations with respect to the selection of systems and materials, and cost reducing alternatives including assistance to the Architect-Engineer, and the County in evaluating alternative comparisons versus long term cost effects. The evaluation shall speak to the benefits of the speed of erection and early completion of the project. He shall furnish pertinent information as to the availability of materials and labor that will be required. He shall submit to the County, Permitting Authority and Architect-Engineer such comments as may be appropriate concerning construction feasibility and practicality. He shall call to the Project Director's and the Architect-Engineer's attention in writing any apparent defects in the design, drawings and specifications or other documents. He shall prepare an estimate of the construction cost utilizing the unit quantity survey method.
- (2) Review Reports and Warranty - Within Forty-five (45) days after receiving the Construction Documents for each phase of the project, the Construction Manager shall perform a specific review thereof, focused upon factors of a nature encompassed in Paragraph (1) above and on factors set out in Paragraph (5). Promptly after completion of the review, he shall submit to the Project Director and Permitting Authority, with copies to the Architect-Engineer, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as he may deem appropriate, and all actions taken by the Architect-Engineer with respect to same, any comments he may deem to be appropriate with respect to separating the work into separate contracts, alternative materials, and all comments called for under Article 2.3(5).

AT COMPLETION OF THE CONSTRUCTION MANAGER'S REVIEW OF THE PLANS AND SPECIFICATIONS, EXCEPT ONLY AS TO SPECIFIC MATTERS AS MAY BE IDENTIFIED BY APPROPRIATE COMMENTS PURSUANT TO THIS SECTION, THE CONSTRUCTION MANAGER SHALL WARRANT, WITHOUT ASSUMING ANY ARCHITECTURAL OR ENGINEERING RESPONSIBILITY, THAT THE PLANS AND SPECIFICATIONS ARE CONSISTENT, PRACTICAL, FEASIBLE AND CONSTRUCTIBLE. CONSTRUCTION MANAGER SHALL WARRANT THAT THE WORK DESCRIBED IN THE PLANS AND SPECIFICATIONS FOR THE VARIOUS BIDDING PACKAGES IS CONSTRUCTIBLE WITHIN THE SCHEDULED

## CONSTRUCTION TIME.

DISCLAIMER OF WARRANTY: - THE COUNTY DOES NOT WARRANT THE ACCURACY OR THE CONSTRUCTIBILITY OF THE PLANS OR SPECIFICATIONS.

- (3) Long Lead Procurements - The Construction Manager shall review the design for the purpose of identifying long lead procurement items (machinery, equipment, materials and supplies). When each item is identified, the Construction Manager shall notify the subcontractors, the Project Director and the Architect-Engineer of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected sub-contracts. As soon as the Architect-Engineer has completed drawings and technical specifications and permitting approval has been obtained, the Construction Manager shall prepare invitations for bids. The Construction Manager shall keep himself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items and advise Project Director, Owner and Architect-Engineer of any problems or prospective delay in delivery.
- (4) Separate Contracts Planning - The Construction Manager shall review the design with the Architect-Engineer and make recommendations to the County and to the Architect-Engineer with respect to dividing the work in such manner as will permit the Construction Manager to take bids and award separate construction sub-contracts on the current schedule while the design is being completed. He shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the County.
- (5) Interfacing
  - (a) The Construction Manager shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate subcontracts for procurement of long lead items, the separate construction subcontracts and the general conditions items performed without duplication or overlap, sequenced to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate subcontractors.
  - (b) Without assuming any Design responsibilities of the Architect-Engineer, the Construction Manager shall include in the reports required under Article 2.3(2) comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that the Project Director and Architect-Engineer may arrange for necessary corrections.
- (6) Job-Site Facilities - The Construction Manager shall arrange for all job-site facilities necessary to enable the Construction Manager and the County's representatives and the Architect-Engineer to perform their respective duties in the management, inspection, and supervision of construction.

Tangible personal property, otherwise referred to as Job-Site facilities, include but are not limited to such things as trailers, toilets, typewriters, computers and any other equipment necessary to carry on the project. When the Construction Manager wishes to supply Job-Site Facilities from his own equipment pool, he shall first evaluate a lease option. He may lease such job facilities equipment from his own equipment pool at a price not greater than the lowest of three (3) lease proposals obtained.
- (7) Weather Protection - The Construction Manager shall ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced. He shall submit to the Construction Team his recommendations as to needed requirements of this nature and as to the contract or contracts in which they should be included.
- (8) Market Analysis and Stimulation of Bidder Interest
  - (a) The Construction Manager shall monitor conditions in the construction market to identify

factors that will or may affect costs and time for completing the project; he shall make analysis as necessary to (1) determine and report on availability of labor, material, equipment, potential bidders, and possible impact of any shortages or surpluses of labor or material, and (2) in light of such determinations, make recommendations as may be appropriate with respect to long lead procurement, separation of construction into bid packages, sequencing of work, use of alternative materials, equipment or methods, other economics in design or construction, and other matters that will promote cost savings and completion within the scheduled time.

- (b) Within thirty (30) days after receiving Notice to Proceed, the Construction Manager shall submit a written "Construction Market Analysis and Prospective Bidders Report" setting out recommendations and providing information as to prospective bidders. As various bid packages are prepared for bidding, the Construction Manager shall submit to the Project Director and the Architect-Engineer a list of potential bidders. The Construction Manager shall be responsible to stimulate bidder interest in the local market place and identify and encourage bidding competition.
- (c) The Construction Manager shall carry out an active program of stimulating interest of qualified Contractors and subcontractors in bidding on the work and of familiarizing those bidders with the requirements of this project.

## 2.4 CONSTRUCTION PHASE

- (1) Construction Manager's Staff - The Construction Manager shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Construction Manager to coordinate, inspect and provide general direction of the work and progress of the subcontractors and he shall provide no less than those personnel during the respective phases of construction that are set forth in Exhibit "C" to this agreement. He shall not change any of those persons named in Exhibit "C" unless mutually agreed to by the County and Construction Manager. In such case, the County shall have the right of approval of the qualifications of replacement personnel. Such approval will not be unreasonably withheld.
- (2) Lines of Authority - The Construction Manager shall establish and maintain lines of authority for his personnel, and shall provide this definition to the County and all other affected parties such as the code inspectors of the Permitting Authority, the sub-contractors, the Architect-Engineer and the County's representatives, to provide general direction of the work and progress of the various phases and subcontractors. The County and Architect-Engineer may attend meetings between the Construction Manager and his Subcontractors; however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontractors.
- (3) Schedule and Project Manual Provisions - The Construction Manager shall provide subcontractors and the County, its representatives and the Architect-Engineer with electronic copies of the Project Manual developed and updated as required by Article 2.2 expanded for the Construction Phase employing their respective milestones, beginning and finishing dates, their respective responsibilities for performance and the relationships of their work with respect to subcontractors and suppliers. The schedule shall include all phases of the construction work, material supplies, long lead procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance testing requirements. He shall advise the County, its representatives and the Architect-Engineer of their required participation in any meeting or inspection giving each at least one week notice unless such notice is made impossible by conditions beyond his control. He shall hold job-site meetings at least once each month with the Construction Team and at least once each week with the subcontractors and the Architect-Engineer's Field Representative, or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors.
- (4) Solicitation of Bids
  - (a) Without assuming responsibilities of the Architect-Engineer, and unless waived in writing by the County, the Construction Manager shall prepare invitations for bids, or requests for proposal when applicable, for all procurements of long lead items, materials and services, and for Subcontractor contracts. If solicitation of bids is waived in writing by the County, the Construction Manager will adhere to County policy and procedures for all procurements of long lead items, materials and services, and for Subcontractor contracts.

Invitations for bids shall be prepared in accordance with the following guidelines:

1. Contracts over Ten Thousand Dollars (\$10,000) but not exceeding Twenty Five Thousand Dollars (\$25,000) may be entered into by the Construction Manager with the firm which submits the lowest verbal quotation. The Construction Manager shall obtain a minimum of two (2) verbal quotations. These quotations shall be entered on a bid tabulation sheet and a copy of such tabulation sent to the County and Architect-Engineer upon request. The successful quotation shall be confirmed by written contract or purchase order defining the scope and quality of work to be provided and awarded to the firm with the most responsive bid .
  2. Contracts exceeding Twenty Five Thousand Dollars (\$25,000) but not exceeding Two Hundred Thousand Dollars (\$200,000) may be entered into by the Construction Manager with the firm who is qualified and submits the most responsive proposal. The Construction Manager shall request at least three (3) firms to submit sealed written proposals based on drawings and/or specifications. The written proposals shall all be received at the location, date and time named by the Construction Manager in his request for proposal. A tabulation of the results shall be furnished to the County and Architect-Engineer upon request.
  3. Contracts exceeding Two Hundred Thousand Dollars (\$200,000) may be entered into by the Construction Manager with the firm who is qualified and submits the most responsive proposal. The Construction Manager shall advertise these projects at least once with the last advertisement appearing at least 21 calendar days prior to the established bid opening date and at least five 5 days prior to any scheduled pre-bid conference. These proposals shall be based on approved plans and specifications. Bids shall be received at the location, date and time established in the bid advertisement.
  4. Individual purchases of materials or rentals or leases of equipment amounting to less than Ten Thousand Dollars (\$10,000) each may be made without bids or quotes when reasonably necessary to expedite work on the project, however, the Construction Manager shall not divide or separate procurement in order to avoid the requirements set forth above.
  5. Site utilities may be acquired at market rates from the entity(ies) providing such in the franchise area.
- (b) As part of such preparation, the Construction Manager shall review the specifications and drawings prepared by the Architect-Engineer. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the Construction Manager shall be brought to the attention of the Project Director and Architect-Engineer in written form.
  - (c) For any pre-bid conference, if questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Construction Manager shall transmit these to the Architect-Engineer and upon receiving clarification or correction in writing shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.
  - (d) For all contracts exceeding Two Hundred Thousand Dollars (\$200,000), the Construction Manager shall establish a pre-qualification procedure for applicable subcontract trades.
- (5) Bonds - In accordance with the provisions of Section 255.05, Florida Statutes, the Construction Manager shall provide to the County a one hundred (100) percent Performance Bond and a one hundred (100) percent Labor and Material Payment Bond each in an amount not less than the total construction cost as defined in Article 9 and inclusive of the Construction Manager's fees.

To be acceptable to the County as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:

1. The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.

2. The Surety Company shall have currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
3. The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
4. The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued.
5. If the Contract Award Amount exceeds Five Hundred Thousand (\$500,000), the Surety Company shall also comply with the following provisions:
  - A. The Surety Company shall have at least the following minimum ratings in the latest issue of Best's Key Rating Guide.

| <u>CONTRACT AMOUNT</u> |                | <u>POLICYHOLDER'S<br/>RATING</u> | <u>REQUIRED<br/>FINANCIAL RATING</u> |
|------------------------|----------------|----------------------------------|--------------------------------------|
| \$ 500,000             | TO 1,000,000   | A-                               | CLASS I                              |
| \$1,000,000            | TO 2,000,000   | A-                               | CLASS II                             |
| \$2,000,000            | TO 5,000,000   | A-                               | CLASS III                            |
| \$5,000,000            | TO 10,000,000  | A-                               | CLASS IV                             |
| \$10,000,000           | TO 25,000,000  | A-                               | CLASS V                              |
| \$25,000,000           | TO 50,000,000  | A-                               | CLASS VI                             |
| \$50,000,000           | TO 100,000,000 | A-                               | CLASS VII                            |

- B. The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:
    - (a) Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to do business in this state have been met.
    - (b) In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.
- (6) Quality Control - The Construction Manager shall develop and maintain a program, acceptable to the County and Architect-Engineer, to assure quality control of the construction. He shall supervise the work of all subcontractors providing instructions to each when their work does not conform to the requirements of the plans and specifications and he shall continue to exert his influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. Should disagreement occur between the Construction Manager, the County or the Architect-Engineer over acceptability of work and conformance with the requirements of the specifications and plans, the County shall be the final judge of performance and acceptability.
- (7) Subcontractor Interfacing - The Construction Manager shall be the single point of interface with all subcontractors for the County and all of its agents and representatives including the Architect-Engineer. He shall negotiate all change orders, field orders and request for proposals, with all affected subcontractors and shall review the costs of those proposals and advise the County and Architect-Engineer of their validity and reasonableness, acting in the County's best interest prior to requesting approval of each change order from the County. Before any work is begun on any change order, a written authorization from the County must be issued. However, when health and safety are threatened, the Construction Manager shall act immediately to



remove the threat to health and safety. He shall also carefully review all shop drawings and then forward the same to the Architect-Engineer for review and actions. The Architect-Engineer will transmit them back to the Construction Manager who will then issue the shop drawings to the affected subcontractor for fabrication or revision. The Construction Manager shall maintain a suspense control system to promote expeditious handling. He shall request the Architect-Engineer to make interpretations of the drawings or specifications requested of him by the subcontractors and shall maintain a suspense control system to promote timely response. He shall advise the Project Director and Architect-Engineer when timely response is not occurring on any of the above.

- (8) Permits - The Construction Manager shall coordinate with the Architect-Engineer in order to secure all necessary building permits from the Permitting Authority and all necessary utility connection permits, the cost of which will be considered a direct cost item.
- (9) Job Site Requirements
  - (a) The Construction Manager shall provide for each of the following activities as a part of his Construction Phase fee:
    - 1. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.
    - 2. Maintain a roster of companies on the project with names and telephone numbers of key personnel.
    - 3. Establish and enforce job rules governing parking, clean-up, use of facilities, worker discipline and control of access to areas under construction where extra security is required pursuant to FAA and or TSA requirements.
    - 4. Provide labor relations management for a harmonious, productive project.
    - 5. Provide a safety program for the project to meet OSHA requirements. Monitor for subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.
    - 6. Provide a quality control program as developed under Article 2.4(6) hereinabove.
    - 7. Miscellaneous office supplies that support the construction efforts which are consumed by his own forces.
    - 8. Travel to and from his home office to the project site as the project requires.
  - (b) The Construction Manager shall arrange for separate subcontracts to provide each of the following as a direct cost item:
    - 1. Schedule the services of independent testing laboratories and provide the necessary testing of materials to ensure conformance to contract requirements.
    - 2. The printing and distribution of all required bidding documents and shop drawings, including the sets required by the Permitting Authority's inspectors.
- (10) Job Site Administration - The Construction Manager shall provide as part of his construction phase fee, job site administrative functions during construction to assure proper documentation, including but not limited to such things as the following:
  - (a) Job Meetings - Hold weekly progress and coordination meetings to provide for an easy flowing project. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering including direct tax saving purchases and delivery of materials, work sequences, inspection and testing, labor allocation, etc. Review and coordinate each subcontractor's work. Review and implement revisions to the Schedule. Monitor and promote safety requirements. In addition, regular project status meetings will be held between the Architect-Engineer, the County and the Construction Manager either biweekly or monthly, whichever is designated by the Project Director.

Use the job site meeting as a tool for preplanning of work and enforcing schedules and for establishing procedures, responsibilities, and identification of authority for all to clearly understand.

Identify party or parties responsible for follow up on any problems, delay items or questions and record course for solution. Revisit each pending item at each subsequent meeting until resolution is achieved. Require all present to make any problems or delaying event known to those present for appropriate attention and resolution.

- b) Shop Drawing Submittals/Approvals - Provide staff to check shop drawings and to implement procedures for submittal and transmittal to the Architect-Engineer of such drawings for action, and closely monitor their submittal and approval process.
- (c) Material and Equipment Expediting - Provide staff to closely monitor material and equipment deliveries, critically important checking and follow-up procedures on supplier commitments of all subcontractors.
- (d) Payments to subcontractors - Develop and implement a procedure for review, processing, and payment of applications by subcontractors for progress and final payments.
- (e) Document Interpretation - Refer all questions for interpretation of the documents prepared by the Architect-Engineer to the Architect-Engineer.
- (f) Reports and Project Site Documents - Record the progress of the project. Submit written progress reports to the County and the Architect-Engineer including information on the subcontractor's work, and the percentage of completion. Keep a daily log available to the County, the Architect-Engineer and the Permitting Authority inspectors.
- (g) Subcontractor's Progress - Prepare periodic punch lists for subcontractor's work including unsatisfactory or incomplete items and schedules for their completion.
- (h) Substantial Completion - Ascertain when the work or designated portions thereof are ready for the Architect-Engineer's substantial completion inspection. From the Architect-Engineer's list of incomplete or unsatisfactory items, prepare a schedule for their completion indicating completion dates for the Owner's review. If the Construction Manager wishes the Architect-Engineer to conduct a pre-substantial completion inspection in conjunction with his own forces, the Architect-Engineer will prepare the presubstantial punch list from which the Construction Manager will develop a completion schedule. The Architect-Engineer will issue a certificate of substantial completion when the work on his presubstantial punch list has been accomplished (See Exhibit D).
- (i) Final Completion - Monitor the Subcontractor's performance on the completion of the project and provide notice to the County and Architect-Engineer that the work is ready for final inspection. Secure and transmit to the County, through the Architect-Engineer, all required guarantees, affidavits, releases, including but not limited to release of liens, bonds and waivers, manuals, record drawings, and maintenance books including the Final Completion form shown in Exhibit E.
- (j) Start-Up - With the County's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the trade contractors and subcontractors.
- (k) Record Drawings - During the progress of the work, the Construction Manager shall require the plumbing, air conditioning, heating, ventilating, elevator, and electrical subcontractors to record on their field sets of drawings the exact locations, as installed, of all conduit, pipe and duct lines whether concealed or exposed which were not installed exactly as shown on the contract drawings. The Construction Manager shall also record all drawing revisions that have been authorized by change order that effect wall or partition locations, door and window locations and other template changes. The exact routing of conduit runs shall be shown on these drawings. In addition, the Construction Manager shall forward all record drawing information to the Architect-Engineer who will provide the record drawings in Autocad form to the County. The Construction Manager shall provide ongoing construction site surveys during and upon completion of excavation, upon completion of ground floor and first floor columns and at other critical stages.

Each drawing shall be noted "As-Built" and shall bear the date and name of the subcontractors that performed the work. Where the work was installed exactly as shown on the contract drawings the sheets shall not be disturbed except as noted above.

The Construction Manager shall review the completed As-Built drawings and ascertain that all data furnished on the drawings are accurate and truly represent the work as actually installed. When manholes, boxes, underground conduits, plumbing, hot or chilled water lines, inverts, etc. are involved as part of the work, the Construction Manager shall furnish true elevations and locations, all properly referenced from the original bench mark used for this project.

- (11) Administrative Records - The Construction Manager will maintain at the job site, unless agreed to otherwise by the Project Director, on a current basis, files and records such as, but not limited to the following:

- Contracts or Purchase Orders
- Shop Drawing Submittal/Approval Logs
- Equipment Purchase/Delivery Logs-
- Contract Drawings and Specifications with Addenda Clearly Posted on Drawings
- Warranties and Guarantees
- Cost Accounting Records:
  - Sales Tax Recovery Status Report
  - Labor Costs
  - Material Costs
- Subcontractor Payment Exception Report
- Equipment Costs
- Cost Proposal Requests
- Payment Request Records
- Meeting Minutes
- Cost-Estimates
- Bulletin Quotations
- Lab Test Reports
- Insurance Certificates and Bonds
- Contract Changes
- Purchase Orders
- Material Purchase Delivery Logs
- Technical Standards
- Design Handbooks
- "As-Built" Marked Prints
- Operating & Maintenance Instruction
- Daily Progress Reports
- Monthly Progress Reports
- Correspondence Files
- Transmittal Records
- Inspection Reports
- Bid/Award Information
- Bid Analysis and Negotiations
- Punch Lists
- PMIS Schedule and Updates
- Suspense (Tickler) Files of Outstanding Requirements
- Project Manual
- RFI/RFP Logs and Entries

The project records shall be available at all times to the County and Architect-Engineer for reference or review.

- (12) County Occupancy - The Construction Manager shall provide services during the design and construction phases, which will provide a smooth and successful County occupancy of the project. He shall provide consultation and project management to facilitate County occupancy and provide transitional services to get the work, as completed by the contractors, "on line" in such conditions as will satisfy County operational requirements.

He shall conduct the Construction Manager's preliminary punch list inspection and coordinate the completion of all punch list work to be done with Owner occupancy requirements in mind.

He shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the County in such a manner as to promote their usability. He shall provide operational training, in equipment use, for building operators.

He shall secure required guarantees and warranties, assemble and deliver same to the County in a manner that will facilitate their maximum enforcement and assure their meaningful implementation.

He shall continuously review As-Built Drawings and mark up progress prints to provide as much accuracy as possible.

The County will not occupy or take control of the project until the above items discussed in this paragraph have been completed and the "Substantial Completion", "Start-Up", "Record Drawing", and "Warranty" requirements specified in paragraphs 2.4(10)(h), 2.4(10)(j), 2.4(10)(k), and 2.4(13) have been completed to the County's satisfaction excluding the requirements for a warranty inspection nine months after Owner Occupancy.

- (13) Warranty - Where any work is performed by the Construction Manager's own forces or by subcontractors under contract with the Construction Manager, the Construction Manager shall warrant that all materials and equipment included in such Work will be new except where indicated otherwise in Contract Documents, and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Drawings and specifications. With respect to the same Work, the Construction Manager further agrees to correct all work found by the County to be defective in material and workmanship or not in conformance with the Drawings and Specifications for a period of one year from the Date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. The Construction Manager shall collect and deliver to the County any specific written warranties given by others as required by the Contract Documents. Also, the Construction Manager shall conduct, jointly with the County and the Architect-Engineer, a warranty inspection nine (9) months after the date of Owner Occupancy.

### **ARTICLE 3 COUNTY'S RESPONSIBILITIES**

- 3.1 County's Information - The County shall provide full information regarding its requirements for the project.
- 3.2 County's Representative - The Director of Facilities Development shall be fully acquainted with the project and shall define the lines of Owner authority to approve Project Construction Budgets, and changes in the Project. He shall render decisions promptly and furnish information expeditiously.
- 3.3 Architect and Engineer's Agreement - The County shall retain an Architect-Engineer for design and to prepare construction documents for the project. The Architect-Engineer's services, duties and responsibilities are described in the Agreement between the County and the Architect-Engineer, a copy of which will be furnished to the Construction Manager. The Agreement between the County and the Architect-Engineer shall not be modified without written notification to the Construction Manager.
- 3.4 Site Survey and Reports - The County shall provide all surveys describing the existing physical characteristics, soil reports, and subsurface investigations, legal limitations, utility locations, and a legal description.
- 3.5 Approvals and Easements - The County shall pay for necessary approvals, easements, and assessments. (See Article 4 for permits)
- 3.6 Legal Services - The County shall furnish such legal services as may be necessary for providing the items set forth in Article 3.5 and such auditing services as it may require.
- 3.7 Drawings and Specifications - The County shall direct the Architect-Engineer to provide the Construction Manager with an electronic set of all Drawings and Specifications.
- 3.8 Cost of Surveys & Reports - The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the County's expense, and the Construction Manager shall be entitled to rely upon the accuracy and

completeness thereof.

- 3.9 Project Fault Defects - If the County becomes aware of any fault or defect in the Project or non-conformance with the drawings and specifications, the County shall give prompt written notice thereof to the Construction Manager and Architect-Engineer in written form.
- 3.10 Funding - The County shall furnish in accordance with the established schedule, reasonable evidence satisfactory to the Construction Manager that sufficient funds will be available and committed for the cost of each part of the Project. The Construction Manager shall not commence any work, unless authorized in writing by the County.
- 3.11 Lines of Communication - The County and Architect-Engineer shall communicate with the subcontractors or suppliers only through the Construction Manager while such method of communication is effective in maintaining project schedules and quality.
- 3.12 Lines of Authority - The County shall establish and maintain lines of authority for its personnel and shall provide this definition to the Construction Manager and all other affected parties.
- 3.13 Permitting & Code Inspections - The County recognizes and coordinates with the Permitting Authority and expects the Construction Manager to do the same.
- 3.14 Threshold Inspection - If required, the County will contract separately with the Architect-Engineers, structural engineer or other certified firm to develop and implement threshold inspection activities in compliance with State regulations

#### **ARTICLE 4 PERMITTING AND INSPECTION**

Before Construction can begin, the Construction Manager or the Architect-Engineer, as applicable, shall obtain all necessary permits. In addition, construction will be inspected for code compliance, compliance with drawings and specifications by inspectors working for the Permitting Authority. The building permitting and code inspection requirements shall be as described in Articles 4.1 through 4.2 hereinafter.

- 4.1 Building Permits - The Construction Manager is obligated to obtain and pay for building permits from all authorities for construction of this County facility.

In the case of plumbing, electrical, other internal system permits and connection permits, the Construction Manager or appropriate subcontractor is obligated to obtain such permits and pay such fees.

The Construction Manager shall determine the permits and fees required by any entity having jurisdiction over any part of the project and shall include the cost of all such permits as a direct cost item.

- 4.2 Code Inspections - All projects will require detailed code compliance inspections by the local authorities with jurisdiction over the area in which the project is located. The disciplines normally include, but are not necessarily limited to, structural, mechanical, electrical, plumbing and general building. The contractor shall make all permits, drawings, specifications, previous inspection reports, and change documents available to Code Inspectors. The contractor shall provide a copy of each inspection report to the Architect/Engineer in a timely fashion.

#### **ARTICLE 5 SUBCONTRACTS**

- 5.1 Definition - A subcontractor is a person or organization who has a direct contract with the Construction Manager to perform any of the work at the site. Nothing contained in the Contract Document shall create any contractual relation between the County or Architect-Engineer and any subcontractor.
- 5.2 Proposals - Subject to Article 9 and, in accordance with Article 2.4(4), the Construction Manager shall request and receive proposals from subcontractors and suppliers and will award those contracts to the most responsive bidder after he has reviewed each proposal for compliance with the bid package and is satisfied that the subcontractor is qualified to perform the work.
- 5.3 REQUIRED SUBCONTRACTORS' QUALIFICATIONS AND SUBCONTRACT CONDITIONS
- 5.3.1 Subcontractual Relations - By an appropriate written agreement, the Construction Manager shall

require each subcontractor to the extent of the work to be performed by the subcontractor, to be bound to the Construction Manager by the terms of the Contract Documents, and to assume toward the Construction Manager all the obligations and responsibilities which the Construction Manager by these Documents, assumes toward the County and the Architect-Engineer. Said agreements shall preserve and protect the rights of the County and Architect-Engineer under the Contract Documents with respect to the Work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Construction Manager shall require each Subcontractor to enter into similar agreements with any Sub-subcontractors.

The Construction Manager shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Article 5.3 and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to any Sub-subcontractor.

#### 5.3.2 Subcontract Requirements

(1) On all subcontracts where the bid exceeds One Hundred Thousand Dollars (\$100,000) the Construction Manager may require subcontractors to provide a one hundred (100) percent performance bond and a one hundred (100) percent labor and material payment bond from a surety company authorized to do business in the State of Florida by the Department of Insurance. If the Construction Manager wishes to award subcontracts to Subcontractors unable to supply this bonding, he may request special authorization to do so. Upon providing justifiable background information, such authorization shall not be withheld unreasonably and shall be in writing.

(2) On all subcontracts where the bid exceeds Two Hundred Thousand Dollars (\$200,000), each subcontractor must submit a completed experience questionnaire and financial statement on the form entitled "Experience Questionnaire and Construction Manager's Financial Statement" Form #DBC-5085, or equivalent form supplied by Construction Manager.

(3) Subcontractor experience - The subcontractor must have successfully completed no less than two projects of similar size and complexity within the last five years.

(4) Supervision - The subcontractor must agree to provide field (on-site) supervision through a named superintendent for each trade (general concrete forming and placement, masonry, mechanical, plumbing, electrical and roofing) included in the subcontract. In addition, the subcontractor shall assign and name a qualified employee for scheduling direction for its work. The supervisory employees of the subcontractor (including field superintendent, foreman and schedulers at all levels) must have been employed in a supervisory (leadership) capacity of substantially equivalent level on a similar project for at least two years within the last five years. The subcontractor shall include a resume of experience for each employee identified by him to supervise and schedule his work.

(5) All subcontracts shall provide:

a. LIMITATION OF REMEDY - NO DAMAGES FOR DELAY

That the subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the County or Architect-Engineer or attributable to the County or Architect-Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time.

In the event of a change in the work the subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus no more than 15% for overhead, profit and bond costs.

Each subcontract shall require the subcontractor to expressly agree that the foregoing constitute the sole and exclusive remedies for delays and changes in the work and thus eliminate any other remedies for claim for increase in the contract price, damages, losses or additional compensation.

b. Each subcontract shall require that any claims by subcontractor for delay or additional cost must be submitted to Construction Manager within the time and in the manner in which the Construction Manager must submit such claims to the County, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.

#### 5.4 Responsibilities for Acts and Omissions - The Construction Manager shall be responsible to the

County for the acts and omissions of its employees and agents and its subcontractors, their agents and employees, and all other persons performing any of the work or supplying materials under a contract to the Construction Manager. The Construction Manager and the County agree that should the duration of the construction stipulated herein for Final Completion extend beyond Eleven (11) months after the receipt of final drawings and specifications, receipt of all necessary permits and issuance of the Notice-To-Proceed, due to no fault of the County and due to acts or omissions on the part of the Construction Manager, its employees or agents, or its subcontractors, or their employees or agents or all other persons performing any of the work or supplying materials under contract to the Construction Manager, then the appropriate amount of liquidated damages are Two Thousand dollars (\$2,000) per working day for each day or portion thereof.

- 5.5 Subcontracts to be provided. The Construction Manager shall include a copy of each subcontract, including the general supplementary conditions, in the project manual.

## **ARTICLE 6 SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

- 6.1 At the time a Guaranteed Maximum Price (GMP) is established, as provided for in Article 7, a project substantial completion date, a project final completion date and a County Occupancy date for completion of the project in accordance with the master project schedule, shall also be established by the Construction Team. The Construction Manager agrees to complete the construction in accordance with the agreed upon substantial completion date, final completion date and County Occupancy date. The Construction Manager acknowledges that failure to complete the project within the construction time set forth in the approved schedule may result in damages to the County for all of which damages the Construction Manager shall be liable pursuant to article 5.4. Upon good cause being shown by the Construction Manager, the County may reduce or waive liquidated damages.
- 6.2 The date of County Occupancy shall occur as described in Article 2.4(12) hereinabove. Warranties called for by this Agreement or by the Drawings and Specifications shall commence on the Date of Owner Occupancy of the project or of any portion of the project as applicable.

## **ARTICLE 7 GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION**

- 7.1 When the Design Development Documents are sufficiently complete to establish the scope of work for the project or any portion thereof, as generally defined by a design document listing to be provided by the Architect-Engineer and Construction Manager upon execution of this Agreement, which is to be used only as a guide in developing the specifications and plan data necessary to establish a Guaranteed Maximum Price, or at such time thereafter designated by the County, the Construction Manager will establish and submit in writing to the County for approval a Guaranteed Maximum Price, guaranteeing the maximum price to the County, for the construction cost of the project or designated part thereof. Such Guaranteed Maximum Price will be subject to modification for changes in the project as provided in Article 10. However, the actual price paid for the work by the County shall be the actual cost of all work subcontracts, supply contracts, direct labor costs, direct supervision costs, and direct job costs as defined under Article 9, plus the Construction Manager's fees or the GMP, whichever is less when the work is complete.
- 7.2 The GMP will only include those taxes in the cost of the project which are legally enacted at the time the GMP is established.
- 7.3 When the project is bid and one hundred (100) percent of the Trade Contracts have been executed, the contingency within the GMP may be decreased in proportion to the percent of the work completed. In other words, if ten (10) percent of the work has been completed and the Owner requests that the contingency within the GMP be adjusted, then ten (10) percent of the contingency within the GMP will be removed from the GMP by change order.
- 7.4 At the time of submission of a Guaranteed Maximum Price, the Construction Manager will verify the time schedule for activities and work which were adopted by the Construction Team and used to determine the Construction Manager's cost of work. In addition to the cost of work, a GMP will include an agreed upon sum as the construction contingency which is included for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The Construction Manager will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the County. Documentation for use of the Contingency shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the PMIS. The Architect-Engineer shall verify the actual costs. If bids are received below the

applicable line items in the GMP, the surplus will be added to the contingency.

If bids received are two (2) percent or greater above the applicable line item in the GMP the Construction Manager shall seek approval in writing from the County before they are accepted; if the bids received are below two (2) percent the deficiency will be taken from the contingency, however such events shall not be cause to increase the GMP.

If bids are not received for a portion of the work at or below the applicable line item amount in the GMP, the Construction Manager reserves the right to perform that portion of the work as acknowledged by the County or negotiate for its performance for the specified line item lump sum amount or less.

## **ARTICLE 8 CONSTRUCTION MANAGER'S FEE**

8.1 In consideration of the performance of the contract, the County agrees to pay the Construction Manager as compensation for his services, fees as set forth in Subparagraphs 8.1.1, 8.1.2 and 8.1.3.

8.1.1 Preconstruction Phase Fee - For the performance of the services set forth under paragraphs 2.1.3(l), 2.1.4(a)(b)(c)(d), 2.3(1) and 2.3(2) and for profit and overhead related to these services, a total fee of Sixty Five Thousand Dollars (\$65,000). The Preconstruction Phase Fee shall be invoiced and paid with an initial monthly payment of Twenty Five Thousand Dollars (\$25,000) followed by two (2) equal monthly payments of Twenty Thousand Dollars (\$20,000) in accordance with the Florida Prompt Payment Act, F.S. 218.735. The first monthly payment shall become due following proper invoicing and the issuance of Notice-To-Proceed with the Preconstruction Phase Services.

The Construction Manager's personnel to be assigned during this phase and their duties and responsibilities to this project and the duration of their assignments are shown on Exhibit F.

8.1.2 Construction Phase Fee - Prior to commencement of the Construction Phase, the County will direct the Construction Manager in writing to proceed into the Construction Phase. The Construction Manager's compensation for work or services performed during the Construction Phase shall be a fee of Six Hundred Fifty Thousand (\$650,000). (However, the County retains the right to review the need and effectiveness of any employee or employees assigned by the Construction Manager, should the Project Director question the need for the employee or employees). The Construction Phase Fee shall be invoiced and paid in Ten (10) monthly payments of Sixty Thousand Dollars (\$60,000) each and one final monthly payment of Fifty Thousand Dollars (\$50,000) in accordance with the Florida Prompt Payment Act F.S. 218.735. The Construction Phase Fee monthly payment amount may be adjusted by mutual agreement. The first monthly payment shall become due following the issuance of the first Construction Authorization by the Project Director and the final monthly payment shall be paid only when construction of the project is finally completed and occupancy of the project accepted by the County. If construction is authorized only for a part of the project, the fee paid shall be proportionate to the amount of work authorized by the County.

(1) Construction Manager's Exclusive Remedy: In the event the construction Substantial or Final Completion date is extended, regardless of whether delay is caused by any act or neglect of the County or the Architect-Engineer, or is attributable to the County or the Architect-Engineer, the Construction Manager's sole and exclusive remedy is an extension of the construction completion date and payment of additional Construction Phase fees and Overhead and Profit for Construction Phase as provided by Articles 10 and 16.

(2) Costs and Expenses Included in Fee - The following are included in the Construction Manager's fee for services during the Construction Phase:

(a) Salaries or other compensation of the Construction Manager's employees at his principal office and branch offices.

The Construction Manager's personnel to be assigned during the construction phase, their duties and responsibilities to this project and the duration of their assignments are shown on Exhibits H and I.

(b) The costs of all data processing staff.

(c) Salaries or other compensation of the Construction Manager's employees at the job site. The Construction Manager's personnel to be assigned to the site during the Construction



Phase under the job site management and supervision fee, their duties and responsibilities and the duration of their assignment are shown on Exhibit I.

- (d) General operating expenses incurred in the management and supervision of the project, except as expressly included in Article 9.
- (e) Those services set forth in Article 2.4(9)(a).
- (f) Job office supplies - includes paper, pencils, paper clips, file folders, staples, etc., and janitorial supplies (photo copy or blue print paper not included).
- (g) Direct tax saving purchase program.

8.1.3 Overhead And Profit For Construction Phase - For overhead, profit and general expenses of any kind, except as may be expressly included in Article 9, for services provided during and related to the construction phase, the fee shall be Three Hundred Fifty Seven Thousand Five Hundred Dollars (\$357,500) and shall be paid proportionally to the ratio of the cost of the work in place, and less retainage (see Article 12.1), as it relates to the GMP. The balance of the fee shall be paid when construction of the project is finally completed and occupancy of the project is accepted by the County. If construction is authorized only for a part of the project, the fee paid shall be proportionate to the amount of work authorized by the County.

## **ARTICLE 9 COST OF THE PROJECT**

9.1 Definition - The term Cost of the Project shall mean costs necessarily incurred in the Project during the Construction Phase for Construction services and paid by the Construction Manager which is not included in Article 8. Such costs shall include the items set forth below in this Article.

The County agrees to pay the Construction Manager for the Cost of the Project as defined in Article 9. Such payment shall be in addition to the Construction Manager's fees stipulated in Article 8.

### 9.2 Direct Cost Items

- (1) Wages paid for labor (as opposed to wages paid to management or supervisory personnel) in the direct employ of the Construction Manager in the performance of his work under this Agreement times a multiple of 1.5 to cover fringe benefits. The multiplier may be adjusted as applicable as agreed between the parties.
- (2) Cost of all materials, supplies and equipment incorporated in the Project, including costs of transportation and storage thereof.
- (3) Payments due to subcontractors from the Construction Manager or made by the Construction Manager to subcontractors for their work performed pursuant to contract under this Agreement.
- (4) Cost including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are employed or consumed in the performance of the work.
- (5) Rental charges on all necessary machinery and equipment, exclusive of hand tools used at the site of the Project, whether rented from the Construction Manager or other, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, which are used in the support of a sub-contractor or the Construction Manager's own forces in the performance of the work, at rental charges consistent with those prevailing in the area.
- (6) Cost of the premiums for all insurance and cost of premiums for all bonds which the Construction Manager is required to procure by this Agreement specifically for the construction project. This includes any sub-contractor bonds the Construction Manager deems appropriate.
- (7) Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by any governmental authority, and for which the Construction Manager is liable.
- (8) The cost of corrective work subject, however, to the GMP and except for any corrective work made necessary because of defective workmanship or other causes contributed to by the

Construction Manager or his subcontractors or suppliers.

No costs shall be paid by the County to the Construction Manager for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Plans and Specifications or to correct any deficiency or damage caused by negligent acts by the Construction Manager.

- (9) Minor expenses at the site, such as telegrams, long distance telephone calls, telephone service, expressage, postage, and similar petty cash items in connection with the Project to be billed at cost.
- (10) Costs for trash and debris control and removal from the site.
- (11) Cost incurred due to an emergency affecting the safety of persons and property.
- (12) Legal costs and fees reasonably and properly resulting from prosecution of the Project for the County, including handling claims for changes by Subcontractors and Vendors, subject to the following limitations:
  - (a) The County approved incurring such costs in advance, which approval shall not be unreasonably denied; and
  - (b) The legal costs and fees were not incurred as result of the Construction Manager's own negligence or default.

This paragraph does not provide for payment of legal costs and fees incurred in preparing or asserting claim or requests, by Construction Manager himself or for his legal representative, for change orders or in enforcing the obligations of this contract.

- (13) If requested by the County, the Construction Manager will perform all or a portion of any item in Article 9 for the cost of the work.
- (14) If approved by the County, the Construction Manager, when qualified, may perform all or a portion of the work for any item listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit for the direct cost of the work.
- (15) Transportation greater than a hundred (100) miles from the site for those personnel employed directly for the project. Such transportation must be approved in advance by the County, and may be in accordance with the Construction Manager's standard personnel policy but not exceeding the limits established by Florida Statutes 112.061.
- (16) Costs of all reproductions used for bidding or information purposes required by the project to directly benefit the project.
- (17) Costs for watchman and security services for the project.
- (18) Costs for efficient logistical control of the site, including horizontal and vertical transportation of materials and personnel. Also, costs for adequate storage and parking space.
- (19) Costs for such temporary facilities during construction, as approved by the County, including temporary water, heat, power, sanitary facilities, telephones, radios and computers with software.
- (20) Costs for any job site items not referenced herein, not normally provided by the subcontractors, which will be provided by the Construction Manager as required to complete the work.
- (21) Cost of utilizing a computer aided design and drafting application (CADD) for record drawings as described in Article 2.4(10)(k). Upon completion of the work, the Construction Manager shall furnish record drawing information to the Architect-Engineer. The Architect-Engineer shall record all as-built conditions on disk and shall forward a copy of the disk together with a set of blue line or black line prints to the County.
- (22) Costs for independent testing and resulting documentation pursuant to Article 2.4(9)(b)1.
- (23) Costs of security background checks pursuant to Article 17.7.1.

## **ARTICLE 10 CHANGE IN THE PROJECT**

- 10.1 Change Orders - The County, without invalidating this Agreement, may order Changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions, the GMP, and the Construction Completion Date, being adjusted accordingly. All changes in the Project not covered by an authorized contingency shall be authorized by written Change Order signed by the County. The County Administrator shall be authorized to sign all Change Orders not exceeding Twenty five Thousand Dollars (\$25,000). Change Orders which exceed Twenty Five Thousand and One Dollars (\$25,001) shall be approved by the Board of County Commissioners.
- 10.1.1 A Change Order is a written order to the Construction Manager signed by the County issued after the execution of this Agreement, authorizing a Change in the Project, the Construction Manager's fee, or the Construction Completion date. Each adjustment in the GMP resulting from a change order shall clearly separate the amount attributable to the Cost of the Project.
- 10.1.2 The increase or decrease in the Guaranteed Maximum Price resulting from a change in the Project shall be determined in one or more of the following ways:
- (1) by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect-Engineer and the County;
  - (2) by unit prices stated in the Agreement or subsequently agreed upon;
  - (3) by cost as defined in Article 9 and a mutually acceptable fixed or percentage fee; or
  - (4) by the method provided in Subparagraph 10.1.3.
- 10.1.3 If none of the methods set forth in Clause 10.1.2 is agreed upon, the Construction Manager, provided he receives a written order signed by the County, shall promptly proceed with the Work involved. The cost of such Work shall then be determined on the basis of the reasonable expenditures and savings of those performing the Work attributed to the change. However, in the event a Change Order is issued under these conditions, the Architect-Engineer will establish an estimated cost of the work and the Construction Manager shall not perform any work whose cost exceeds that estimate without prior written approval by the County. In such case, and also under Article 10.1.2 above, the Construction Manager shall keep and present, in such form as the County may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Project as outlined in Article 9. The amount of decrease in the Guaranteed Maximum Price to be allowed by the Construction Manager to the County for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease.
- 10.1.4 If unit prices are stated in the Agreement or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the County or the Construction Manager, the applicable unit prices and Guaranteed Maximum Price shall be equitably adjusted.
- 10.1.5 Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Drawings, Specifications, or County furnished information or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, be encountered, the Guaranteed Maximum Price and the Construction Completion date shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 10.2.
- 10.2 Claims for Additional Cost or Time

All claims for additional cost or time shall be made by request for a change order submitted as provided in Article 16.

If the Construction Manager is delayed at any time in the progress of the work by any act or omission of the County or the Architect-Engineers or of any employee of the County or by any changes ordered in the work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond the Construction Manager's control or by delay authorized by the County pending

resolution of disputes, and such delay extends the completion date, the Substantial Completion shall be extended by Change Order for such reasonable time as the Construction Team may determine.

Only delays which are determined to extend the critical path for the schedule for constructing the project will result in a time extension. Neither the County nor the Construction Manager shall be considered to own the schedule float time.

10.3 Changes in the Project

The Architect-Engineer will have authority to order minor changes in the Project not involving an adjustment in the Guaranteed Maximum Price or an extension of the Construction Completion Date and not inconsistent with the intent of the Drawings and Specifications. Such changes shall be effected by written order. Documentation of changes shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the PMIS. Any changes shall be approved by the Project Director.

10.4 Emergencies

In any emergency affecting the safety of persons or property, the Construction Manager shall act at his discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided in Article 10.

**ARTICLE 11  
DISCOUNTS AND PENALTIES**

- 11.1 All discounts for prompt payment shall accrue to the County to the extent the Cost of the project is paid directly by the County. To the extent the Cost of the Project is paid with funds of the Construction Manager, all cash discounts shall accrue to the Construction Manager. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Project. All penalties incurred due to fault of the Construction Manager for late payment of cost of the project will be paid by the Construction Manager.

**ARTICLE 12  
PAYMENTS TO THE CONSTRUCTION MANAGER**

- 12.1 Monthly Statements - The Construction Manager shall submit to the County a statement, sworn to if required, along with the cost reports required under Article 2.1.5, showing in detail all monies paid out, cost accumulated or costs incurred on account of the Cost of the Project during the previous period and the amount of the Construction Manager's fees due as provided in Article 8. Ten percent (10%) retainage shall be held on all payments until the contract is fifty percent (50%) complete, except when approved by the County certain suppliers and subcontractors may be paid the entire amount due when such payment is generally the practice of the industry. At fifty percent (50%) completion, the County may approve a reduction of the retainage from ten percent (10%) to five percent (5%) at its discretion. Retainage shall not be withheld on services or fees set forth in Article 8. The Construction Manager's Design Phase Fee, Construction Phase Fee and Overhead & Profit shall be shown as separate line items on the Schedule of Contract Values.
- 12.2 Final Payment - Final payment constituting the unpaid balance of the Cost of the Project and the Construction Manager's fee, shall be due and payable as described in Article 17.6 after the County has accepted occupancy of the project, provided that the Project be then finally completed, that the Construction Manager has verified by his signature that he has completed all items specified on the attached K, and that this Agreement has been finally performed. However, if there should remain work to be completed, the Construction Manager and the Architect-Engineer shall list those items prior to receiving final payment and the County may retain a sum equal to two hundred percent (200%) of the estimated cost of completing any unfinished work and portion of the Construction Manager's retainage, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items are likewise listed separately. The estimated cost of completing any unfinished work shall be determined by the Architect-Engineer and approved by the County. Thereafter, the County shall pay to Construction Manager, monthly, the amount retained for each incomplete item after each of said items is completed.
- 12.3 Payments to Subcontractors - The Construction Manager shall promptly, within fifteen (15) days after receipt of payment from the County, pay all the amount due subcontractors less a retainage of ten percent (10%) until the project is fifty percent (50%) complete, and based on Construction Manager's

evaluation of the subcontractor's acceptable performance, the County may approve a reduction in retainage from ten percent (10%) to five percent (5%) thereafter. If there should remain items to be completed, the Construction Manager and Architect-Engineer shall list those items required for completion and the Construction Manager shall require the retainage of a sum equal to two hundred percent (200%) of the estimated cost of completing any unfinished items, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items likewise listed separately. The estimated cost of completing any unfinished work shall be determined by the Architect-Engineer and approved by the County. Thereafter, the Construction Manager shall pay to the subcontractors, monthly, the amount retained for each incomplete item after each of said items is completed. Before issuance of final payment without any retainage, the subcontractor shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted and instruction for the County's operating and maintenance personnel is complete.

Final payment may be made to certain select subcontractors whose work is satisfactorily completed prior to the total completion of the Project but only upon approval of the County.

- 12.4 Delayed Payments by Owner - If the County should fail to pay the Construction Manager within thirty (30) days after the receipt of an approved payment request from the Construction Manager, then the Construction Manager may, upon seven (7) additional days written notice to the County and the Architect-Engineer stop the Project until payment of the amount owing has been received.

Approval of payment requires that application for payment shall be made by the Construction Manager and is then reviewed and signed by the Construction Manager, Architect-Engineer, the Director of Facilities Development, the County Engineer, and the County Administrator. The thirty (30) days above begins to run on the date of the last signature.

- 12.5 Payments for Materials and Equipment - Payments will be made for material and equipment not incorporated in the work but delivered and suitably stored at the site or another location subject to prior approval and acceptance by the County on each occasion.

- 12.6 Withholding Payments to Subcontractors - The Construction Manager shall not withhold payments to subcontractors if such payments have been made to the Construction Manager. Should this occur for any reason, the Construction Manager shall immediately return such monies to the County, adjusting pay requests and project bookkeeping as required.

### **ARTICLE 13 INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION**

- 13.1 Indemnity

Notwithstanding any minimum insurance requirements prescribed elsewhere in this agreement, The Construction Manager shall defend, indemnify and hold the County and the County's elected and appointed officers and employees harmless from and against (i) any claims, actions or causes of action, (ii) any litigation, administrative proceedings, appellate proceedings, or other proceedings relating to any type of injury (including death), loss, damage, fine, penalty or business interruption, and (iii) any costs or expenses (including, without limitation, costs of remediation and costs of additional security measures that the Federal Aviation Administration, the Transportation Security Administration or any other governmental agency requires by reason of, or in connection with a violation of any federal law or regulation, attorneys' fees and costs, court costs, fines and penalties) that may be asserted against, initiated with respect to, or sustained by, any indemnified party by reason of, or in connection with, (A) any activity of the Construction Manager or any of its employees, agents, contractors, subcontractors or other invitees, (B) the negligence or willful misconduct of the Construction Manager or any of its employees, agents, contractors, subcontractors or other invitees, or (C) the Construction Manager's default in respect of any of the obligations that it undertakes under the terms of this agreement, except to the extent the claims, actions, causes of action, litigation, proceedings, costs or expenses arise from the intentional or sole negligent acts or omissions of the County or any of its employees, agents, contractors or invitees. Insofar as the claims, actions, causes of action, litigation, proceedings, costs or expenses relate to events or circumstances that occur during the term of this agreement, this section will survive the expiration of the term of this agreement or any earlier termination of this agreement. The Construction Manager hereby acknowledges receipt of one hundred dollars and other good and valuable consideration as part of his fee in exchange for giving the Owner the indemnification provided above.

13.2 Construction Manager's Insurance

- (1) The Construction Manager shall not commence any construction work in connection with this Agreement until he has obtained all of the following types of insurance and such insurance has been approved by the County, nor shall the Construction Manager allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in Florida.
- (2) Worker's Compensation and Employers Liability Insurance - The Construction Manager shall take out and maintain during the life of this Agreement Worker's Compensation Insurance for all his employees connected with the work of this Project and, in case any work is sublet, the Construction Manager shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Construction Manager. Such insurance shall comply with the Florida Worker's Compensation Law. In case any class of employees engaged in hazardous work under this contract at the site of the Project is not protected under the Worker's Compensation statute, the Construction Manager shall provide adequate insurance, satisfactory to the County, for the protection of employees not otherwise protected. The minimum limits of such insurance shall be:
  - (a) Part One – Workers Compensation – Statutory
  - (b) Part Two – Employers Liability
    - Bodily Injury by Accident, each accident - \$1,000,000
    - Bodily Injury by Disease, each employee - \$1,000,000
    - Bodily Injury by Disease, policy limit - \$1,000,000
- (3) Construction Manager's Public Liability and Property Damage Insurance-The Construction Manager shall take out and maintain during the life of this Agreement Comprehensive General Liability and Comprehensive Automobile Liability Insurance as shall protect him from claims for damage for personal injury, including accidental death, as well as claims for property damages which may arise from operating under this Agreement whether such operations are by himself or by anyone directly or indirectly employed by him, and the amount of such insurance shall be minimum limits as follows:
  - (a) Construction Manager's Comprehensive General Liability \$1,000,000 Each Occurrence, Coverages, Bodily Injury & Property Damage
  - (b) Automobile Liability Coverages, \$1,000,000 Each Occurrence, Bodily Injury & Property Damage Combined Single Limit
  - (c) Excess Liability, Umbrella Form \$10,000,000 Each Occurrence,The terms and conditions of the Excess Liability and Umbrella Form coverages shall be no less restrictive than those of the underlying Comprehensive General Liability and Automobile Liability coverage's required above.

Coverage under (a), (b), and (c) shall be provided on an occurrence basis unless otherwise accepted by the county..
- (4) Subcontractor's General Liability Insurance - The Construction Manager shall require each of his subcontractors to procure and maintain during the life of this subcontract, insurance of the type specified above with limits of liability acceptable to the Construction Manager and the County.
- (5) Owner's and Contractor's Protective Liability Insurance - The Construction Manager shall procure as a cost of the project and furnish an Owner's and Contractor's Protective Liability Insurance Policy in the name of the County with the following limits:
  - (a) Bodily Injury Liability & Property Damage Liability \$1,000,000 Each Occurrence \$1,000,000 General Aggregate
- (6) "XCU" (Explosion, Collapse, Underground Damage - The Construction Manager's Liability

Policy shall provide "XCU" coverage under its general liability policy.

- (7) Broad Form Property Damage Coverage, Products & Completed Operations Coverages -The Construction Manager's General Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverages.
- (8) Contractual Liability Work Contracts - The Construction Manager's General Liability Policy shall include Contractual Liability Coverage designed to protect the Construction Manager for contractual liabilities assumed by the Construction Manager in the performance of this Agreement.
- (9) Certificate of Insurance - The County shall be furnished proof of coverage of Insurance as follows:

Certificate of Insurance form will be furnished to the County along with the Contract Documents. . This Certificate shall be dated and show:

- (a) The name of the insured Construction Manager, the specific job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date.
- (b) Certificate of Insurance shall be in the form as approved by Insurance Standards Office (ISO) and such Certificate shall clearly state all the coverages required in this Section commencing at 13.2 and ending with 13.3.4.
- (c) Certificate of Insurance shall state that the Monroe County Board of County Commissioners is listed as additional insured on all policies except for Workers Compensation.

### 13.3 Waiver of Subrogation

13.3.1 Damages Caused by Perils Covered by Insurance The Owner and the Construction Manager waive all rights against each other, as it relates to the Insurance coverage listed in section 13.2. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.

13.3.2 Loss or Damage to Equipment Covered by Insurance The County and Construction Manager waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.

13.3.3 Property and Consequential Loss Policies The County waives subrogation against the Construction Manager on all property and consequential loss policies carried by the County on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.

13.3.4 Endorsement of Policies If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owner of such policies will cause them to be so endorsed, failure to obtain proper endorsement nullifies the waiver of subrogation.

13.3.5 County's Insurance The County shall purchase and maintain builders all-risk insurance on a replacement cost basis and in an amount not less than one hundred percent (100%) of the insurable value of (i) the Work that is to be done, and (ii) all Insurable items of Work and materials to be incorporated into the Work, title to which has been acquired by Owner in accordance with the General Conditions, if such materials in or upon the Work. Notwithstanding the foregoing, such insurance shall not cover any property owned, leased, or otherwise used in connection with the Work by Construction Manager, Construction Manager's Subcontractors or their respective agents or employees. Such Builders' Risk Insurance shall provide protection against physical loss or damage caused by the following perils: fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke, vandalism, malicious mischief, sprinkler leakage, theft, water damage, including flood, and sprinkler leakage, and collapse. The County shall name the Construction Manager as an insured on the policy as the law and insurance regulations allow. The Construction Manager shall not be subject to any deductibles on the policy.

**ARTICLE 14**  
**TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT TO PERFORM CONSTRUCTION**  
**MANAGER'S OBLIGATION**

14.1 Termination by the Construction Manager - If the Project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, or if the Project should be stopped for a period of sixty (60) days by the Construction Manager, for the County's failure to make payments thereon, then the Construction Manager may, upon seven days written notice to the County, request payment for all work executed, the Construction Manager's fees earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery, including reasonable profit, damages and terminal expenses incurred by the Construction Manager.

14.2 Owner's Right to Perform Construction Manager's Obligations and Termination by Owner for Cause.

- (1) If the Construction Manager fails to perform any of his obligations under this Agreement including any obligation he assumes to perform work with his own forces, the County may, after seven (7) days written notice during which period the Construction Manager fails to commence correction of such obligation, make good such deficiencies. The GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the County of making good such deficiencies and the Construction Manager's Construction Phase Fee shall be reduced by an amount required to manage the making good of such deficiencies.
- (2) If the Construction Manager is adjudged a bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials and fails to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls forty five (45) days or more behind schedule) which has been adopted by the Construction Team, or if he fails to make prompt payment to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Agreement, then the County may, without prejudice to any right or remedy and after giving the Construction Manager and his surety, if any, seven (7) days written notice, during which period Construction Manager fails to commence correction of the violation, terminate the employment of the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Construction Manager, and may finish the Project by whatever method the County may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his obligations assumed under Article 7. Reasonable terminal expenses incurred by the County may be deducted from any payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract work).
- (3) If the Construction Manager refuses to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Construction Manager in conjunction with this Agreement, then the County may, without prejudice to any right or remedy and after giving the Construction Manager and his surety, if any, seven (7) days written notice, during which period Construction Manager still fails to allow access, terminate the employment of the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the Construction Manager, and may finish the project by whatever method the County may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his obligations assumed under Article 7. Reasonable terminal expenses incurred by the County may be deducted from any payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract work).

14.3 Termination by Owner Without Cause

- (1) If the County terminates this Agreement other than pursuant to Article 14.2(2) or Article 14.2(3), he shall reimburse the Construction Manager for any unpaid Cost of the Project due him under Article 9, plus that part of the unpaid balance of the Construction Phase Fee in an



amount as will increase the payment on account of his fee to a sum which bears the same ratio to the Construction Phase Fee as the Cost of the Project at the time of termination bears to the Guaranteed Maximum Price, if established, otherwise to the Owner's Construction Budget. The County shall also pay to the Construction Manager fair compensation, either by purchase or rental at the election of the County, for any equipment retained. In case of such termination of Agreement the County shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Construction Manager has previously undertaken or incurred in good faith in connection with said Project. The Construction Manager shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps including the legal assignment of his contractual rights, as the County may require for the purpose of fully vesting in him the rights and benefits of the Construction Manager under such obligations or commitments.

- (2) After the establishment of the Guaranteed Maximum Price or at the completion of the Preconstruction Phase, if the final cost estimates or lack of adequate bonding capacity make the Project no longer feasible from the standpoint of the County, the County may terminate this Agreement and pay the Construction Manager his proportionate fee due in accordance with Article 8.1 plus any costs incurred pursuant to Articles 9 and 10.

## **ARTICLE 15 ASSIGNMENT AND GOVERNING LAW**

- 15.1 Assignment Consent - Neither the County nor the Construction Manager shall assign his interest in this Agreement without the written consent of the other except as to the assignment of proceeds.
- 15.2 Governing Laws - This Agreement shall be governed by the Laws of the State of Florida applicable to contracts made and to be performed entirely in the State of Florida.. In the event that any cause of action or administrative proceeding is instituted for the enforcement or the interpretation of this Agreement, the County and the Construction Manager agree that venue will lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida.

## **ARTICLE 16 NOTICE OF CLAIM: WAIVER OF REMEDIES; NO DAMAGES FOR DELAY**

- 16.1 Governing Provisions - The County's liability to Construction Manager for any claims arising out of or related to the subject matter of this contract, whether in contract or tort, including, but not limited to, claims for extension of construction time, for payment by the County of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by the following provisions:
  - (a) All claims must be submitted as a Request for Change Order in the manner as provided herein;
  - (b) The Construction Manager must submit a Notice of Claim to the County and to the Architect-Engineer within 20 days of when the Construction Manager became aware of the occurrence of the event giving rise to the claim; and
  - (c) Within ten (10) days, or as agreed to otherwise, of submitting its Notice of Claim, the Construction Manager shall submit to the County its Request for Change Order, which shall include a written statement of all details of the claim, including a description of the work affected.

The Construction Manager agrees that the County shall not be liable for any claim that the Construction Manager fails to submit as a Request for Change Order as provided in this paragraph.

- 16.2 Written Determination of Claim - After receipt of a Request for Change Order, the County, in consultation with the Architect-Engineer, shall deliver to the Construction Manager its written determination of the claim. As to matters subject to the determination by final agency action (not actions for breach of contract or tort) the County's written decision shall be final agency action unless the Construction Manager requests an administrative proceeding pursuant to Section 120.57, Florida Statutes, by filing a petition in compliance with Rule Chapter 28-106, F.A.C. within twenty-one (21) days of the Construction Manager's receipt of the County's determination.
- 16.3 Exclusive Remedy For Delays - For any work the Construction Manager performs, the Construction Manager's exclusive remedy for delays in performance of the construction caused by events beyond its

control, including delays claimed to be caused by or attributable to the County or the Architect-Engineer, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with 16.1 above, for an extension of the scheduled construction time. In the event of a change in such work, the Construction Manager's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus five and a half percent (5.5%) for profit. The Construction Manager expressly agrees that the foregoing constitute its sole and exclusive remedies for delays and changes in such work, and eliminate any other remedies for claim for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

## **ARTICLE 17 MISCELLANEOUS**

- 17.1 Harmony - Construction Manager is advised and hereby agrees that he will exert every reasonable and diligent effort to assure that all labor employed by Construction Manager and his Subcontractors for work on the project shall work in harmony with and be compatible with all other labor being used by the Construction Manager and construction manager's subcontractors now or hereafter on the site of the project.

Construction Manager further agrees that this provision will be included in all subcontracts of the Subcontractors as well as the Construction Manager's own contract; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.

- 17.2 Apprentices - If the Construction Manager employs apprentices on the project, the behavior of the Construction Manager and the County shall be governed by the provisions of Chapter 446, Florida Statutes, and by applicable standards and policies governing apprentice programs and agreements established by the Division of Labor of the State of Florida Department of Labor and Employment Security. The Construction Manager will include a provision similar to the foregoing sentence in each subcontract.

- 17.3 Invoices - Invoices shall be submitted in detail sufficient for a proper preaudit and postaudit thereof. Invoices for any travel expenses shall be submitted in accordance with procedures specified in Section 112.061 of the Florida Statutes governing payments by the State for travel expenses.

- 17.4 Construction Manager's Project Records - The Construction Manager's Project Records shall be maintained as prescribed hereinabove in accordance with the State of Florida General Records Schedule for State Agencies A-1 and shall be made available to the County or his authorized representative at mutually convenient times.

- 17.5 Construction Manager's Payment Rights - The Construction Manager shall be paid in accordance with the Florida Prompt Payment Act, F.S. 218.735.

- 17.6 Public Entity Crime Information Statement - "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Construction Manager, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."

- 17.7 Discrimination, Denial Or Revocation For The Right To Transact Business With Public Entities - An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

- 17.8 Unauthorized Aliens - The County shall consider the employment by the Construction Manager of unauthorized aliens a violation of section 274A(e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this contract if the Construction Manager has failed to ensure proper documentation of employee eligibility.

- 17.9 Electronic Mail Capabilities - The Construction Manager must have electronic mail capabilities through the World Wide Web. It is the intention of the County to use electronic communication for all projects whenever possible. The Construction Manager shall provide their electronic mail address and the name of a contact person responsible for their electronic communications.
- 17.10 Assignment - For and in recognition of good and valuable consideration, receipt of which is hereby acknowledged, the Construction Manager hereby conveys, sells, assigns and transfers to the State of Florida all rights, title and interest in and to all causes to action it may now or hereafter acquire under the antitrust laws of the United States and the State of Florida for price fixing, relating to the particular goods or services purchased or acquired by the State of Florida pursuant to this Agreement.
- 17.11 Maintenance of Books and Records - Construction Manager shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Each party to this Agreement or their authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement for public records purposes during the term of the Agreement and for four years following the termination of this Agreement. If an auditor employed by the County or Clerk determines that monies paid to Construction Manager pursuant to this Agreement were spent for purposes not authorized by this Agreement, the Construction Manager shall repay the monies .
- 17.12 Terms Not To Be Construed Against Either Party – This Agreement has been carefully reviewed by the Construction Manager and the County. Therefore, this Agreement is not to be construed against either party on the basis of authorship.
- 17.13 Mediation - The County and Construction Manager agree that, in the event of conflicting interpretations of the terms or a term of this Agreement by or between any of them the issue shall be submitted to mediation prior to the institution of any other administrative or legal proceeding.
- 17.14 Severability - If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The County and Construction Manager agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.
- 17.15 Attorney's Fees and Costs - The County and Construction Manager agree that in the event any cause of action or proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, courts costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.
- 17.16 Binding Effect - The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the County and Construction Manager and their respective legal representatives, successors, and assigns.
- 17.17 Claims for Federal or State Aid Construction Manager and County agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement, provided that all applications, requests, grant proposals, and funding solicitations shall be approved by each party prior to submission.
- 17.18 Adjudication of Disputes or Disagreements - County and Construction Manager agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If no resolution can be agreed upon within thirty (30) days after the first meet and confer session, the issue or issues shall be discussed at a public meeting of the Board

of County Commissioners. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law.

- 17.19 Cooperation - In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, County and Construction Manager agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. County and Construction Manager specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.
- 17.20 Nondiscrimination - County and Construction Manager agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. County and Construction Manager agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss.1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.
- 17.21 Covenant of No Interest - County and Construction Manager covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.
- 17.22 Code of Ethics - County agrees that officers and employees of the County recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.
- 17.23 No Solicitation/Payment - The County and Construction Manager warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the provision, the Construction Manager agrees that the County shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.
- 17.24 Public Access. The County and Construction Manager shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the County and Construction Manager in conjunction with this Agreement; and the County shall have the right to unilaterally cancel this Agreement upon violation of this provision by Construction Manager

- 17.25 Non-Waiver of Immunity. Notwithstanding the provisions of Sec. 286.28, Florida Statutes, the participation of the County and the Construction Manager in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the County be required to contain any provision for waiver.
- 17.26 Privileges and Immunities. All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the County, when performing their respective functions under this Agreement within the territorial limits of the County shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the County.
- 17.27 Legal Obligations and Responsibilities and Non-Delegation of Constitutional or Statutory Duties. This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the County, except to the extent permitted by the Florida constitution, state statute, and case law.
- 17.28 Non-Reliance by Non-Parties. No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the County and the Construction Manager agree that neither the County nor the Construction Manager any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general for the purposes contemplated in this Agreement.
- 17.29 Attestations. Construction Manager agrees to execute such documents as the County may reasonably require, to include a Public Entity Crime Statement, an Ethics Statement, and a Drug-Free Workplace Statement.
- 17.30 No Personal Liability. No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of Monroe County in his or her individual capacity, and no member, officer, agent or employee of Monroe County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.
- 17.31 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.
- 17.32 Section Headings. Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.
- 17.33 Force Majeure: Neither party shall be liable for disruptions or delays in construction due to the occurrence of any contingency beyond its control, including war or act of war whether an actual declaration thereof is made or not, act of terrorism impacting travel in the United States, insurrection, riot or civil commotion, act of public enemy, epidemic, quarantine restriction, storm, flood, drought or other act of God, act of nature (including presence of endangered animal species which cannot be removed in a safe and timely manner) or any act of any governmental authority which disrupts or delays construction, in full or in part, for which the respective party has exercised reasonable care in the prevention thereof. Any disruption or delay due to the causes stated shall not constitute a breach of the Agreement and the sole and the exclusive remedies shall be pursuant to article 10, and article 16. Upon demand of either party, the other party must furnish evidence of the causes of such disruption or delay
- 17.34 Mutual Review – This agreement has been carefully reviewed by the Construction Manager and the County therefore, this agreement is not to be construed against either party on the basis of authorship.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2005.

(SEAL)  
ATTEST: DANNY L. KOLHAGE, CLERK

**BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA**

By \_\_\_\_\_  
Deputy Clerk

By \_\_\_\_\_  
Mayor Dixie M. Spehar

\_\_\_\_\_  
Witness

**THE TOWERGROUP, INC.**

\_\_\_\_\_  
Witness

By \_\_\_\_\_  
Title \_\_\_\_\_

**EXHIBIT A**

**CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES**

(Intentionally left blank by agreement of parties and will be completed in the GMP  
Amendment or other times appropriate to the specific Exhibit)

County

Architect-Engineer

Construction Manager

**EXHIBIT B**

**COUNTY'S CONSTRUCTION BUDGET**

ITEM DESCRIPTION  
BUDGET

CONSTRUCTION

CONSTRUCTION MANAGER'S PRECONSTRUCTION PHASE FEE .....

CONSTRUCTION MANAGER'S CONSTRUCTION PHASE FEE.....

CONSTRUCTION MANAGER'S OVERHEAD & PROFIT .....

CONSTRUCTION BUDGET BALANCE .....

COUNTY'S TOTAL CONSTRUCTION BUDGET.....



**EXHIBIT C**

**CONSTRUCTION MANAGERS'S PERSONNEL**

**OFF-SITE SUPPORT STAFF**

(Intentionally left blank by agreement of parties and will be completed  
in the GMP Amendment or other times appropriate to the specific Exhibit)

Individual

Title

**ON-SITE SUPPORT STAFF**

Individual

Title

**EXHIBIT D**

(Intentionally left blank by agreement of parties and will be completed  
in the GMP Amendment or other times appropriate to the specific Exhibit)

**ARCHITECT/ENGINEER'S CERTIFICATE OF SUBSTANTIAL COMPLETION**

PROJECT NUMBER: \_\_\_\_\_ ARCHITECT/ENGINEER: \_\_\_\_\_  
PROJECT: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
COUNTY: \_\_\_\_\_ CONSTRUCTION MANAGER \_\_\_\_\_  
Department of Facilities Development  
ATTN: \_\_\_\_\_ CONTRACT FOR: \_\_\_\_\_  
DATE OF ISSUANCE: \_\_\_\_\_ CONTRACT DATE: \_\_\_\_\_  
PROJECT OR DESIGNATED PORTION SHALL INCLUDE: \_\_\_\_\_  
\_\_\_\_\_

The work performed under this Contract has been reviewed and found to be substantially complete. The Date of Substantial Completion of the Project or portion thereof designated above is hereby established as \_\_\_\_\_ which is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below.

**DEFINITION OF DATE OF SUBSTANTIAL COMPLETION**

The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Architect-Engineer when construction is sufficiently complete, in accordance with the Contract Documents, so the County can occupy or utilize the Work or designated portion thereof for the use for which it is intended as expressed in the Contract Documents.

A list of items to be completed or corrected is attached hereto. The failure to include any items on such list does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents. The date of commencement of warranties for items on the attached list will be the date of final payment unless otherwise agreed to in writing.

\_\_\_\_\_  
ARCHITECT/ENGINEER BY: \_\_\_\_\_ DATE \_\_\_\_\_

The County accepts the Work or designated portion thereof as substantially complete.

Department Of Facilities Development

\_\_\_\_\_  
BY: \_\_\_\_\_ DATE \_\_\_\_\_

The Construction Manager will complete or correct the Work on the list of items attached hereto within the time prescribed in the contract from the above Date of Substantial Completion.

\_\_\_\_\_  
CONSTRUCTION MANAGER BY: \_\_\_\_\_ DATE \_\_\_\_\_

**EXHIBIT E**

**CONSTRUCTION MANAGER'S AFFIDAVIT OF CONTRACT COMPLETION**

(Intentionally left blank by agreement of parties and will be completed  
in the GMP Amendment or other times appropriate to the specific Exhibit)

AGENCY: \_\_\_\_\_

PROJECT: \_\_\_\_\_

CONSTRUCTION MANAGER: : \_\_\_\_\_

CONTRACT FOR: : \_\_\_\_\_

CONTRACT DATE: : \_\_\_\_\_ CONTRACT AMOUNT: : \_\_\_\_\_

**CONSTRUCTION MANAGER'S AFFIDAVIT**

I solemnly swear and affirm: That the work under the above named contract and all amendments thereto have been completed in accordance with the requirements of said contract; that all costs incurred for equipment, materials, labor, and services against the project have been paid; that no liens have been attached against the project; that no suits are pending by reason of work on the project under the contract; that all Workmen's Compensation claims are covered by Workmen's Compensation insurance as required by law; that all public liability claims are adequately covered by insurance, and that the Construction Manager shall save, protect, defend, indemnify, and hold the County harmless from and against any and all claims which arise as a direct or indirect result of any transaction, event or occurrence related to performance of the work contemplated under said contract.

CONSTRUCTION MANAGER:

\_\_\_\_\_ (SEAL)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title of officer or agent) of (name of Corporation acknowledging), a (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced (type of identification) as identification.

(Signature of person taking acknowledgment)

(Name typed printed or stamped)

(Title or Vendor)

## EXHIBIT E (CONT'D)

(Intentionally left blank by agreement of parties and will be completed  
in the GMP Amendment or other times appropriate to the specific Exhibit)

### **CERTIFICATE OF CONTRACT COMPLETION**

PROJECT NO. \_\_\_\_\_

PROJECT TITLE \_\_\_\_\_

CONSTRUCTION MANAGER \_\_\_\_\_

CONTRACT DATE: \_\_\_\_\_ DATE OF FINAL COMPLETION \_\_\_\_\_

#### **CERTIFICATE OF ARCHITECT/ENGINEER**

I CERTIFY: That the work under the above contract has been satisfactorily completed on the date set forth in accordance with the terms of the contract; that the Construction Manager has submitted his sworn affidavit as evidence that he has paid all labor, materials and other charges against the project in accordance with the terms of the contract.

A/E Firm Name: \_\_\_\_\_ Date \_\_\_\_\_

By \_\_\_\_\_

| TO BE COMPLETED BY ARCHITECT/ENGINEER<br>THROUGH THE SUBSTANTIAL COMPLETION PHASE  | DATE          | DAYS          |
|--|---------------|---------------|
| 1. Notice to Proceed (N.T.P.)  | _____         | <u>XXXXXX</u> |
| 2. Time Specified in Original Contract for<br>Substantial Completion (S.C.)  | <u>XXXXXX</u> | _____         |
| 3. Extension Granted by Change Orders (Days Between<br>Original Contract S.C. and Final Contract S.C.)                       | <u>XXXXXX</u> | _____         |
| 4. Total Days Allowable to Substantial Completion<br>(Add Lines 2 and 3)   | <u>XXXXXX</u> | _____         |
| 5. Project Substantially Completed as Certified by A/E<br>(Total Days from N.T.P. through Date certified by A/E)             | _____         | _____         |
| 6. Substantial Completion Overrun (Subtract @ \$ Per Day=\$<br>Line 4 from 5 and Enter Overrun)                              | _____         | _____         |
| THROUGH THE FINAL COMPLETION PHASE   |               |               |
| 1. Time Specified in Contract, Between Substantial<br>& Final Completion   | <u>XXXXXX</u> | _____         |
| 2. Extensions Granted by Change Orders (Days<br>Between S.C. & Final Completion  | <u>XXXXXX</u> | _____         |
| 3. Total Days Allowable Between Substantial & Final<br>Completion (Add Lines 1 & 2)  | <u>XXXXXX</u> | _____         |
| 4. Date Actually Completed and Total Days Between Actual S.C<br>& Date Certified by A/E as Actually being Finally Completed. | _____         | _____         |
| 5. Final Completion Overrun (Subtract Line 3 & 4 @ \$ Per Day = \$<br>and Enter Overrun)                                     | <u>XXXXXX</u> | _____         |
| TOTAL LIQUIDATED DAMAGES \$  |               |               |

DATE: \_\_\_\_\_

**EXHIBIT F**

**CONSTRUCTION MANAGER'S PERSONNEL TO BE  
ASSIGNED DURING PRECONSTRUCTION PHASE**

(Intentionally left blank by agreement of parties and will be completed  
in the GMP Amendment or other times appropriate to the specific Exhibit)

| <u>Individual</u><br><u>Available</u> | <u>Title</u> | Percentage Duration of Time<br><u>In Months</u> |
|---------------------------------------|--------------|---|
|---------------------------------------|--------------|---|

**EXHIBIT G**

**CONSTRUCTION MANAGER'S PER DIEM STAFF FOR TIME  
EXTENSIONS PER 8.1.2(1)(b)**

(Intentionally left blank by agreement of parties and will be completed  
in the GMP Amendment or other times appropriate to the specific Exhibit)

Percentage of Time  
Individual  
Available

Title

**EXHIBIT H**

**CONSTRUCTION MANAGER'S PERSONNEL TO BE  
ASSIGNED DURING CONSTRUCTION OFF-SITE**

(Intentionally left blank by agreement of parties and will be completed  
in the GMP Amendment or other times appropriate to the specific Exhibit)

| <u>Individual</u><br><u>Available</u> | <u>Title</u> | Percentage Duration of Time<br><u>In Months</u> |
|---------------------------------------|--------------|---|
|---------------------------------------|--------------|---|

**EXHIBIT I**

**CONSTRUCTION MANAGER'S PERSONNEL TO BE  
ASSIGNED DURING CONSTRUCTION ON-SITE**

(Intentionally left blank by agreement of parties and will be completed  
in the GMP Amendment or other times appropriate to the specific Exhibit)

| <u>Individual</u><br><u>Available</u> | <u>Title</u> | Percentage Duration of Time<br><u>In Months</u> |
|---------------------------------------|--------------|---|
|---------------------------------------|--------------|---|



**EXHIBIT J**  
**COUNTY'S CERTIFICATE OF PARTIAL PAYMENT**

(Intentionally left blank by agreement of parties and will be completed  
in the GMP Amendment or other times appropriate to the specific Exhibit)

Construction Manager (Name and Address): \_\_\_\_\_

Architect-Engineer Job No: \_\_\_\_\_

Contract Time (Calendar Days): \_\_\_\_\_

Time Elapsed to Date: \_\_\_\_\_

Request No: \_\_\_\_\_

For Period Ending: \_\_\_\_\_

Project Name: \_\_\_\_\_

County Project: \_\_\_\_\_

Federal Project No: \_\_\_\_\_

ADDITIONS \$      DEDUCTIONS \$

Change Orders approved  
in previous months by  
Owner -- TOTAL

\_\_\_\_\_

Subsequent Change Orders

Number      Approved  
                 (Date)

\_\_\_\_\_

Original Contract Sum ..... \$ \_\_\_\_\_

Change Orders (Net) ..... \$ \_\_\_\_\_

Contract Sum To Date ..... \$ \_\_\_\_\_

Balance To Finish ..... \$ \_\_\_\_\_

Completed To Date ..... \$ \_\_\_\_\_

Materials Stored ..... \$ \_\_\_\_\_

Total Completed &

Stored ..... \$ \_\_\_\_\_

Less Retainage \_\_\_\_% ..... \$ \_\_\_\_\_

Add Back Retained

Amount Covered By

Securities ..... \$ \_\_\_\_\_

TOTAL ..... \$ \_\_\_\_\_

Less Previous Certificates ..... \$ \_\_\_\_\_

Less Materials Purchased

Directly By Owner: ..... \$ \_\_\_\_\_

\$ \_\_\_\_\_

TOTALS

Net change by Change Orders \$ \_\_\_\_\_

THIS CERTIFICATE

**CERTIFICATION BY THE CONSTRUCTION MANAGER:** According to the best of my knowledge and belief, I certify that all items and amounts shown on the face of this Application are correct, that all work has been performed and material supplied in full accordance with the terms and conditions of the Contract, and that all materialmen, laborers and subcontractors, as defined in Chapter 713.01, Florida Statutes, have been paid the amounts due them out of any previous payments made to the Construction Manager by the County. Further, I agree to promptly pay each materialman, laborer and subcontractor, as defined in Chapter 713.01, Florida Statutes, upon receipt of payment from the County, out of the amount paid to me on account of such materialman's laborer's or subcontractor's work, the amount to which said materialman, laborer and subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to myself on account of such materialman's, laborer's and subcontractor's work.

CONSTRUCTION MANAGER: \_\_\_\_\_

By: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging), a (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced (type of identification) as identification.

\_\_\_\_\_  
(Signature of person taking acknowledgement)

\_\_\_\_\_  
(Name typed printed or stamped)

\_\_\_\_\_  
(Title or Vendor)

\_\_\_\_\_  
(Serial number, if any)

**CERTIFICATION BY THE ARCHITECT- ENGINEER:** I certify that I have checked and verified this Progress Payment Application; that to the best of my knowledge and belief, the above application is a true statement of the value of the work performed and the materials suitable stored on the site; that all work and materials included in this Certificate have been inspected by me or by my authorized assistants; that all work has been performed and material supplied in full accordance with the terms of this Contract; and I approved for payment the amount noted above.

REVIEWED AND RECOMMENDED FOR PAYMENT:

\_\_\_\_\_  
Architect-Engineer

Date: \_\_\_\_\_

APPROVED FOR SERVICES, PERFORMED AS STATED BY:

\_\_\_\_\_  
Owner's Project Director

Date: \_\_\_\_\_

## **EXHIBIT J (CONT'D)**

Chapter 713.01, Florida Statutes, defines Laborers, Materialmen and Subcontractors as follows:

- (1) "Laborer" means any person other than an architect, landscape architect, engineer, land surveyor, and the like who, under properly authorized contract, personally performs on the site of the improvement labor or services for improving real property and does not furnish materials or labor service of others.
- (2) "Materialman" means any person who furnishes materials under contract to the owner, Construction Manager, subcontractor, or sub-subcontractor on the site of the improvement or for specially fabricated materials off the site of the improvement for the particular improvement, and who performs no labor in the installation thereof.
- (3) "Subcontractor" means a person other than a materialman or laborer who enters into a contract with a Construction Manager for the performance of any part of such Construction Manager's contract.

**EXHIBIT K**

(Intentionally left blank by agreement of parties and will be completed  
in the GMP Amendment or other times appropriate to the specific Exhibit)

**ITEMS TO BE SUBMITTED WITH CONSTRUCTION MANAGER'S REQUEST FOR FINAL PAYMENT**

- \_\_\_\_\_ 1. Rush Requisition Routing Slip
- \_\_\_\_\_ 2. Pay Request (4 copies with original signatures and original seals, noted as Final)
- \_\_\_\_\_ 3. Final Schedule of Contract Values
- \_\_\_\_\_ 4. Consent of Surety to make final Payment (signed and sealed)
- \_\_\_\_\_ 5. Power of Attorney from Surety for Release of Final Payment (Signed and sealed and dated same as Consent of Surety)
- \_\_\_\_\_ 6. Certificate of Contract Completion
  - \_\_\_\_\_ a. page one completed by the Construction Manager (original plus three copies)
  - \_\_\_\_\_ b. page two completed by Architect-Engineer (original plus three copies)
- \_\_\_\_\_ 7. Satisfactory Conclusion or Release of Lien from all subcontractors or laborers who have filed Intent to Liens or have indicated non-payment from the Construction Manager (especially if attorneys are involved)
- \_\_\_\_\_ 8. Construction Manager's Guarantee of Construction for one year from the date of substantial completion
- \_\_\_\_\_ 9. Copy of the approval by the Architect-Engineer and the transmittal to the using agency of manuals, shop drawings, as-builts (two sets of disk files and two sets of blue line or black line prints), brochures, warranties, and List of Subcontractors, with telephone numbers and addresses
- \_\_\_\_\_ 10. Verification that County personnel have been trained in the operation of their new equipment (per system: HVAC, controls, fire alarm, etc.)
- \_\_\_\_\_ 11. Fully executed Roof Warranty (if applicable) in the name of the Using Agency
- \_\_\_\_\_ 12. Other special warranties as required by specifications, in the name of the County
- \_\_\_\_\_ 13. Architect's Certificate of Specification of Asbestos Containing Materials
- \_\_\_\_\_ 14. Construction Manager's Certificate of Asbestos Use
- \_\_\_\_\_ 15. Copy of Certificate of Occupancy

NOTE: The Project Director shall verify the math of all Pay Requests prior to signing Final Pay Request to assure correct payment.

Project Number: \_\_\_\_\_

Project Name and Location: \_\_\_\_\_

Project Director Signature: \_\_\_\_\_

